

**AMERICAN LEGISLATIVE EXCHANGE COUNCIL**

**MEMORANDUM**

**TO:** PUBLIC SAFETY AND ELECTIONS TASK FORCE MEMBERS  
**FROM:** MICHAEL HOUGH, TASK FORCE DIRECTOR  
**DATE:** JULY 1, 2010  
**RE:** 35 DAY MAILING—2010 ANNUAL MEETING

The American Legislative Exchange Council will host its 2010 Annual Meeting **August 5 - 8** at the **Manchester Grand Hyatt in San Diego, California**. The last day to reserve hotel accommodations is **Monday, July 12**. The full Public Safety and Elections Task Force will meet from **9:30 am to 12:30 pm** on **Saturday, August 7**. The Task Force will discuss model legislation and resolutions on DNA Testing Standards, Hawaii's Probation Program, Justice Reinvestment, Earned Compliance Credit, and the *Citizens United* Decision. Mr. John Fund, columnist for the Wall Street Journal, will be speaking to the Task Force and TASER will be conducting a demonstration of the TASER X26 and the new TASER X3.

In addition, the **Corrections and Reentry Working Group** will meet on **Thursday, August 5** from **10:15 am to 11:15 am**, where model legislation and resolutions will be introduced on DNA Testing Standards, H.O.P.E., Justice Reinvestment, and Earned Compliance Credits. The Working Group will also be holding a conference call **Wednesday, July 14, 11:00 am – 12:00 pm (EST)** to discuss the *ALEC Resolution on DNA Testing Standards*. Details for the call are included in this mailing. Subcommittee meetings are open to all members of the Task Force.

ALEC is also excited to announce the Workshop; **Cutting Crime and Budgets: Proven Solutions for Your State**. The Workshop is to take place **Friday, August 6** from **9:30 am – 10:45 am**. This Workshop will discuss proven policy reforms for your state, and how you can save taxpayer dollars and improve public safety at the same time. We strongly encourage all Task Force members to attend and participate in this discussion.

**Please find the following materials enclosed:**

- Annual Meeting Agenda-at-a-Glance
- Task Force Meeting Tentative Agenda
- Working Group Meeting Tentative Agenda
- "Cutting Crime and Budgets: Proven Solutions for Your State" Workshop Advertisement
- Working Group Conference Call Details
- 2010 Spring Task Force Summit Conference Call Minutes
- Draft Model Legislation
- Other Items of Interest
- Task Force Roster
- Registration Forms
- ALEC Mission Statement
- Scholarship Policies by Meeting
- ALEC Task Force Operating Procedures

I look forward to seeing all of you in San Diego! If you have any questions or comments regarding the meeting, please contact me at 202-742-8530 or by e-mail at [mhough@alec.org](mailto:mhough@alec.org).

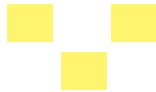
Cordially,



Michael Hough  
Public Safety and Elections Task Force Director



# Agenda



## Tuesday, August 3, 2010

Board of Directors Reception, <i>by invitation only</i>	6:30 p.m. - 7:30 p.m.	Off-site
Board of Directors Dinner, <i>by invitation only</i>	7:30 p.m. - 9:30 p.m.	Off-site

## Wednesday, August 4, 2010

Registration Open	12:00 p.m. - 5:00 p.m.	Litrenta Foyer
Joint Board of Directors Meeting	9:00 a.m. - 5:30 p.m.	Elizabeth FG
State Chairs Training Session	2:00 p.m. - 5:00 p.m.	Del Mar AB
NCHL Working Group	3:00 p.m. - 5:00 p.m.	Madeline ABC
Leadership Reception, <i>by invitation only</i>	6:00 p.m. - 7:00 p.m.	Elizabeth Foyer
<b>Leadership Dinner, <i>by invitation only</i></b> <b>Sponsored by Reynolds American</b>	7:00 p.m. - 9:00 p.m.	Elizabeth GH
<i>Speaker: Ms. Susan Ivey, Chairman, President and CEO, Reynolds American</i>		
Hospitality Suite	9:00 p.m. - 11:00 p.m.	Madeline ABC

## Thursday, August 5, 2010

Registration Open	7:30 a.m. - 5:00 p.m.	Litrenta Foyer
State Chairs Meeting	9:00 a.m. - 11:15 a.m.	Elizabeth F
<b>Task Force: International Relations</b>	9:00 a.m. - 11:15 a.m.	<b>Manchester H, I</b>
ALEC Exhibition Hall Open	8:00 a.m. - 5:00 p.m.	Elizabeth ABCDE
Attendee Grab-N-Go Breakfast	8:00 a.m. - 11:15 a.m.	Elizabeth ABCDE
<b>Task Force Working Groups and Subcommittees</b>	8:00 a.m. - 11:15 a.m.	
Fiscal Federalism Working Group	8:00 a.m. - 9:00 a.m.	Elizabeth G
Environmental Health Working Group	8:00 a.m. - 9:30 a.m.	Manchester G
Transportation Subcommittee	9:00 a.m. - 10:00 a.m.	Elizabeth H
Leadership Institute: New Media Workshop	9:00 a.m. - 11:15 a.m.	George Bush
Public Pension Reform Working Group	9:15 a.m. - 10:15 a.m.	Elizabeth G
Health Care Reform: Repeal vs. Implementation	9:15 a.m. - 11:15 a.m.	Mohsen AB
Energy Subcommittee	10:00 a.m. - 11:15 a.m.	Manchester G

# Agenda



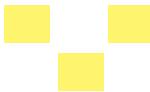
Working Group on Education Reform	10:00 a.m. - 11:15 a.m.	Madeline AB
Corrections and Reentry Working Group	10:15 a.m. - 11:15 a.m.	Elizabeth H
Cy Pres Working Group	10:15 a.m. - 11:15 a.m.	Madeline CD
Fiscal Policy Reform Working Group	10:15 a.m. - 11:15 a.m.	Elizabeth G
<b>Opening Luncheon, sponsored by AT&amp;T</b> <i>Speaker: Randall Stephenson, Chairman, CEO, and President, AT&amp;T Keynote: Gov. Rick Perry (TX)</i>	11:30 a.m. - 1:30 p.m.	Douglas ABC
Workshop: <i>Transferring Credits: Easing the Burden of Students and Taxpayers</i>	1:45 p.m. - 3:00 p.m.	Elizabeth F
Workshop: <i>Regional Climate Initiatives</i>	1:45 p.m. - 3:00 p.m.	Elizabeth G
Workshop: <i>Panel on Prescription Drug Abuse: Good Medicines, Bad Behavior</i>	1:45 p.m. - 3:00 p.m.	Elizabeth H
Workshop: Visa	3:15 p.m. - 4:30 p.m.	Elizabeth F
Workshop: <i>Show Me the Money: Improving Budget Transparency in the States</i>	3:15 p.m. - 4:30 p.m.	Elizabeth G
Workshop: <i>Restoring Good Faith to Insurance "Bad Faith" Legislation</i>	3:15 p.m. - 4:30 p.m.	Elizabeth H
Diageo Wine and Cheese Reception <i>Open to all attendees</i>	5:00 p.m. - 6:00 p.m.	Elizabeth ABCDE
Chairman's Reception, <i>by invitation only</i> <i>Sponsored by AT&amp;T</i>	5:30 p.m. - 6:30 p.m.	Ford ABC
International Relations Reception <i>Sponsored by Reynolds American</i>	6:00 p.m. - 7:00 p.m.	Elizabeth Terrace
<b>California Welcome Reception aboard the U.S.S. Midway, sponsored by California Host Committee</b>	6:30 p.m. - 8:30 p.m.	U.S.S. Midway
Hospitality Suite	9:00 p.m. - 11:00 p.m.	Ford ABC

## Friday, August 6, 2010

Registration Open	7:30 a.m. - 5:00 p.m.	Litrenta Foyer
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# Agenda



## **Plenary Breakfast, sponsored by Bayer Corporation**

*Speaker: Greg Babe, President and CEO, Bayer Corporation*  
*Keynote: Gov. Joe Manchin (WV), invited*

ALEC Exhibition Hall Open 9:30 a.m. - 5:00 p.m. Elizabeth ABCDE

Workshop: *Cutting Crime and Budgets: Proven Solutions for Your State* 9:30 a.m. - 10:45 a.m. Elizabeth F

Workshop: *The Changing Face of Journalism in the States* 9:30 a.m. - 10:45 a.m. Elizabeth G

Workshop: *Creating True and Lasting Budget Reform in Your State* 9:30 a.m. - 10:45 a.m. Elizabeth H

Task Force Chairs Meeting 11:00 a.m. - 12:15 p.m. Mohsen AB

Workshop: *The 10th Amendment: Federalism and Restoring State Sovereignty* 11:00 a.m. - 12:15 p.m. Elizabeth F

Workshop: *Building a Free-Market Movement in Your State* 11:00 a.m. - 12:15 p.m. Elizabeth G

Workshop: *Protecting Philanthropic Freedom* 11:00 a.m. - 12:15 p.m. Elizabeth H

## **Plenary Luncheon, sponsored by Allergan**

*Speaker: Lynn Salo, Vice President, Allergan Medical US Breast Aesthetics Division*

*Keynote:*

Task Force: Commerce, Insurance, and Economic Development 2:30 p.m. - 5:30 p.m. Elizabeth G

Task Force: Civil Justice 2:30 p.m. - 5:30 p.m. Manchester DE

Task Force: Education 2:30 p.m. - 5:30 p.m. Manchester GH

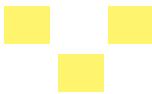
Task Force: Telecom and IT 2:30 p.m. - 5:30 p.m. Manchester AB

Education Task Force Reception, *by invitation only*  
*Sponsored by Bridgepoint Education* 5:30 p.m. - 6:30 p.m. Manchester Foyer

Incoming Chairman's Reception, *by invitation only*  
*Sponsored by Reynolds American* 5:30 p.m. - 6:30 p.m. Ford ABC

State Delegation Night 6:00 p.m. Ford ABC

Hospitality Suite 9:00 p.m. - 11:00 p.m.



# Agenda



## Saturday, August 7, 2010

Registration Open	7:30 a.m. - 12:00 p.m.	Litrenta Foyer
ALEC Exhibition Hall Open	9:30 a.m. - 12:00 p.m.	Elizabeth ABCD
<b>Plenary Breakfast, Sponsored by Pfizer</b>	8:00 a.m. - 9:15 a.m.	Douglas ABC
Task Force: Public Safety and Elections	9:30 a.m. - 12:30 p.m.	Elizabeth H
Task Force: Health and Human Services	9:30 a.m. - 12:30 p.m.	Manchester AB
Task Force: Energy, Environment, and Agriculture	9:30 a.m. - 12:30 p.m.	Manchester GH
Task Force: Tax and Fiscal Policy	9:30 a.m. - 12:30 p.m.	Elizabeth G
<b>Plenary Luncheon, sponsored by Visa</b> <i>Speaker: Fmr. Maj. Leader Dick Armey</i>	12:30 p.m. - 2:15 p.m.	Douglas ABC
Closing Ceremonies	4:00 p.m. - 5:00 p.m.	

## Sunday, August 8, 2010

<b>Prayer Service</b> <i>Speaker: Cal Thomas, Syndicated Columnist</i>	9:00 a.m. - 10:30 a.m.	Ford ABC
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AMERICAN LEGISLATIVE EXCHANGE COUNCIL

# ALEC

**Public Safety and Elections Task Force**  
**2010 Annual Meeting**  
**Saturday, August 7**  
**9:30 am – 12:30 pm**  
**Room: Elizabeth H**

**Tentative Agenda**

<b>1. Call to Order</b>	<b>9:30 AM</b>
Introductions	
Approval of Minutes	
Working Group Report	
Introduction of New Members	
<b>2. Presentations and Model Legislation</b>	
<b>PRESENTATION: Mr. John Fund, <i>Wall Street Journal</i> (20)</b>	<b>9:50 AM</b>
<b>PRESENTATION: TASER Demonstration (30)</b> Mr. Peter Holran and Mr. Pat Murphy, <i>TASER</i>	<b>10:10 AM</b>
<b><u>“ALEC Resolution on DNA Testing Standards” (20)</u></b> Mr. Jeff Boschwitz, <i>Orchid Cellmark</i>	<b>10:40 AM</b>
<b><u>“Resolution in Support of the <i>Citizens United</i> Decision”</u></b> Ms. Laura Renz, <i>Center for Competitive Politics</i>	<b>11:00 AM</b>
<b><u>“Resolution in Support of H.O.P.E.”</u></b> Ms. Kristi Meade, <i>Justice Fellowship</i>	
<b><u>“Resolution in Support of Justice Reinvestment”</u></b> Ms. Kristi Meade, <i>Justice Fellowship</i>	
<b><u>“Earned Compliance Credit Act”</u></b> Rep. Jerry Madden, TX	
<b>3. For the Good of the Order</b>	<b>12:25 PM</b>
<b>4. Adjournment</b>	<b>12:30 PM</b>



**Corrections and Reentry Working Group**  
**2010 Annual Meeting**  
**Thursday, August 5, 2010**  
**San Diego**  
**10:15 a.m. – 11:15 a.m.**

**TENTATIVE AGENDA**

**10:15 a.m. Welcome and Introductions**

Representative Jerry Madden, TX, Public Sector Chair

**10:20 a.m. Proposed Model Legislation: Discussion and Voting**

**“Resolution in Support of H.O.P.E.”**

Ms. Kristi Meade, *Justice Fellowship*

**“Resolution in Support of Justice Reinvestment”**

Ms. Kristi Meade, *Justice Fellowship*

**“ALEC Resolution on DNA Testing Standards” (15)**

Mr. Jeff Boschwitz, *Orchid Cellmark*

**“Earned Compliance Credit Act”**

Rep. Jerry Madden, TX

**11:10 a.m. For the Good of the Order**

**11:15 a.m. Adjournment**

# **Cutting Crime and Budgets: Proven Solutions for Your State**



**Workshop, Friday, August 6**  
**9:30 am—10:45 am**



**Corrections and Reentry Working Group  
Conference Call  
Wednesday, July 14, 2010  
11 AM – 12 PM EST**

In preparation for the Public Safety and Elections Task Force Meeting at Annual, please join us for a conference call to discuss the model resolution: *ALEC Resolution on DNA Testing Standards*. Background information on this issue is included in the 35 day mailing. All Public Safety and Elections Task Force Members are encouraged to call in.

Call information:

**WHEN:** Wednesday, July 14, 2010, 11 AM – 12 PM (EST)

**DIAL:** (712) 432-0075

**PARTICIPANT CODE:** 448313

Please RSVP and direct questions to Courtney O'Brien at [cobrien@alec.org](mailto:cobrien@alec.org).

**American Legislative Exchange Council**  
Public Safety & Elections Task Force  
Spring Task Force Summit  
Conference Call  
April 28, 2010

**Attendees:**

**Public Sector** (8)

Rep. Paul Ray, *Utah* (Public Sector Chair)  
Rep. Joe Driver, *Texas*  
Rep. Dan Lederman, *South Dakota*  
Rep. Jerry Madden, *Texas*  
Sen. Jack Murphy, *Georgia*  
Sen. Pam Roach, *Washington*  
Rep. Scott Suder, *Wisconsin*  
Rep. Gene Whisnant, *Oregon*

**Private Sector** (11)

Tara Mica, *National Riffle Association* (Private Sector Chair)  
Eli Lehrer, *Heartland Institute* (Task Force Advisor)  
Dennis Bartlett, *American Bail Coalition*  
Jon Burton, *Reed Elsevier*  
David Christman, *National Beer Wholesalers Association*  
Trent England, *Evergreen Freedom Foundation*  
Marc Levin, *Texas Public Policy Foundation*  
Kristi Meade, *Prison Fellowship Ministries*  
Natalie Murray, *TASER*  
Sean Parnell, *Center for Competitive Politics*  
Stacie Rumenap, *Stop Child Predators*

**Guests** (1)

Adam Gelb, *PEW*

**I. Preliminaries**

The task force approved the minutes of the December meeting by a unanimous vote.

**II. Subcommittee Reports**

1. Corrections and Reentry – Rep. Jerry Madden, *TX*

The working group met via conference call April 26, 2010 and passed the following bills:

- Recidivism Reduction Act
- Resolution in Support of the National Prison Rape Elimination Commission Standards
- Swift and Certain Sanctions Act

- Community Corrections Performance Measurement Act
- Community Corrections Performance Incentive Act

### **III. Consideration of Model Legislation**

#### **1. “Recidivism Reduction Act” – Rep. Jerry Madden, TX**

This model bill aims to reduce recidivism by requiring a to-be-determined percentage of offenders be supervised in accordance with “evidence based practices.” It also mandates a to-be-determined percentage of offender programming funding be allocated to “evidence based practices.”

Motion to adopt the model legislation; passed the public sector unanimously; passed the private sector unanimously. **Bill Passed.**

#### **2. “Resolution in Support of the National Prison Rape Elimination Commission Standards” – Eli Lehrer, *The Heartland Institute***

This resolution expresses support for the adoption of National Prison Rape Elimination Commission Standards with the goal of preventing rape and sexual abuse in U.S. prisons.

Motion to adopt the model resolution; passed the public sector unanimously; passed the private sector unanimously. **Bill Passed.**

#### **3. “Swift and Certain Sanctions Act” – Rep. Jerry Madden, TX**

This model bill requires community corrections agencies to adopt graduated incentives to reward and/or sanction individuals on parole or probation for compliance or violation.

Motion to adopt the model legislation; passed the public sector unanimously; passed the private sector unanimously. **Bill Passed.**

#### **4. “Community Corrections Performance Measurement Act” – Rep. Jerry Madden, TX**

This model bill establishes a system for objectively and quantitatively measuring community corrections agencies in several key performance areas.

Motion to adopt the model legislation; passed the public sector unanimously; passed the private sector unanimously. **Bill Passed.**

#### **5. “Community Corrections Performance Incentive Act” – Marc Levin, *Texas Public Policy Foundation***

This model bill aims to incentivize corrections officers to reduce crimes committed by probationers. It does this by giving probation departments a share of the savings to the state gained from reduced incarceration costs.

Motion to adopt the model legislation; passed the public sector unanimously; passed the private sector unanimously. **Bill Passed.**

**V. Adjournment**

## **DRAFT ALEC Resolution on DNA Testing Standards**

## *Summary*

A Resolution supporting the FBI effort to “re-evaluate existing policies, standards, and protocols, including requirements for outsourcing DNA analysis to private laboratories and review of their results by public law enforcement laboratories” that ensures continued quality in forensic science.

**WHEREAS**, the American Legislative Exchange Council (ALEC) is the nation's largest individual membership organization of state legislators, dedicated to advancing the Jeffersonian principles of free markets, limited government, federalism and individual liberty; and

**WHEREAS**, on March 23, 2010 the FBI announced that it is re-evaluating the “FBI Quality Assurance Standards for Forensic DNA Testing Laboratories;” and

**WHEREAS**, the efficient use of DNA technology is paramount to helping law enforcement identify the guilty and to preserving and protecting victims' rights to justice and due process; and

**WHEREAS**, the DNA testing backlog is estimated to be 100,000 cases despite several hundred million of taxpayer dollars invested through the Debbie Smith Act to eliminate it, with an additional hundreds of thousands of rape cases in police storage that have not even been submitted to the crime lab for testing; and

**WHEREAS**, private labs must meet the exact same accreditation as public labs (including accreditation site visits) and quality assurance standards (including two reviews of all results) but FBI guidelines require that public labs must conduct their own site visit of private labs and must perform a third review of private lab data which is costly and consumes valuable resources; and

**WHEREAS**, there are numerous examples where this incremental burden placed on public labs results in law enforcement being denied the ability to use private labs when the public lab is capacity constrained because public labs do not have the resources to perform the additional required quality controls; and

**WHEREAS**, large private lab users such as the Los Angeles Police Department have testified that they do not find errors during these third technical reviews and there is a complete lack of empirical evidence comparing public lab and private lab error rates that would justify this requirement; and

40   **WHEREAS**, due to an incentive to remain competitive in the market, private labs perform  
41   testing at as little as half the cost of public labs and are constantly seeking new technology and  
42   more efficient practices; and

43  
44   **WHEREAS**, private laboratories are an underutilized cost-effective resource and creating  
45   guidelines that facilitate public-private partnerships is an inexpensive mechanism to ease the  
46   backlog that will help law enforcement do their job, bring justice to victims, and protect taxpayer  
47   dollars;

48  
49   **THEREFORE BE IT RESOLVED** that ALEC supports the current FBI effort, as stated in  
50   their March 23 press release, to “re-evaluate existing policies, standards, and protocols, including  
51   requirements for outsourcing DNA analysis to private laboratories and review of their results by  
52   public law enforcement laboratories”

53  
54   **THEREFORE BE IT FURTHER RESOLVED** that ALEC supports revised policies that  
55   ensure continued quality in forensic science while holding public and private lab DNA analysis  
56   to the same standards, auditing, and review process.

## **DRAFT Resolution in Support of the *Citizens United* Decision**

## *Summary*

This Resolution emphasizes the importance of first amendment protections of corporations', non-profit advocacy groups', and labor organizations' speech. The resolution warns that mandatory disclosure and disclaimer requirements, particularly relating to an organization's source of funding, can be intimidating to such organizations and inhibit free speech.

**WHEREAS**, the January 2010 Supreme Court decision in *Citizens United v. Federal Election Commission* restored and affirmed the First Amendment rights of corporations, labor organizations, and nonprofit advocacy groups to engage in political speech in campaigns; and

**WHEREAS**, violations and burdensome restrictions placed upon the above named groups have the effect of chilling speech and are in violation of these organizations' First Amendment rights; and

**WHEREAS**, shareholder approval schemes, in which a corporation's shareholders, corporation or nonprofit advocacy organization's board of directors, or labor organization's members are required to give approval of a corporation's independent expenditures, place an onerous burden on these organizations, which serves as a barrier to free speech and is in violation of the Supreme Court's *Citizens United* decision and the First Amendment; and

**WHEREAS**, allowing shareholders to file a civil cause of action against a corporation in dispute of the corporation's political activity functions as a legal threat designed to silence corporate speech; and

**WHEREAS**, bans on independent expenditures made by any organization that receives either state or federal funds from contracts, grants, incentives, or credits are an arbitrary and unnecessary limit on the right of organizations to exercise their First Amendment freedoms; and

**WHEREAS**, barring independent expenditures from domestic subsidiaries of foreign corporations would unnecessarily duplicate existing federal laws prohibiting foreign influence in federal, state, and local elections; and

**WHEREAS**, creating new bans on independent expenditures from domestic subsidiaries would strip First Amendment rights from American citizens; and

**WHEREAS**, disclosure requirements, which go further than what reasonably allows the public and the press to monitor elected officials and the government, such as those that require an organization to name its top funders, are both an affront to the right to private association and a danger to members and donors, who become vulnerable to harassment, intimidation, and retribution from those in disagreement with the position of the organization on an issue; and

**WHEREAS**, disclaimers in broadcast, radio, or print advertisements that require an organization to disclose its top funders or repeat the organization's information a specified number of times

46 impose an onerous burden on an organization, which has the effect of chilling speech since  
47 organizations are limited in the time or space they are given to express their message; and  
48  
49 **THEREFORE BE IT RESOLVED** that the American Legislative Exchange Council (ALEC)  
50 opposes efforts that are outlined above at the federal, state, and local level to undermine the  
51 Supreme Court's decision in *Citizens United v. Federal Election Commission*.

## **DRAFT Resolution in Support of H.O.P.E.**

## Summary

This Resolution recognizes the progress Hawaii's HOPE program has exhibited in lowering the crime rate amongst probationers. The resolution also supports the program and its success and aims to replicate its results in other states.

### *Resolution*

**WHEREAS**, Hawaii's Circuit Judge Steve Alm started the Hawaii Opportunity Probation with Enforcement (HOPE) program in 2004 in an effort to reduce drug use and crime among those probationers most at risk to commit violations; and

**WHEREAS**, community supervision programs are a crucial area within the American criminal justice system; and

**WHEREAS**, the number of adults on probation is rising: in 2008 that figure was almost 4.3 million, 500,000 more than in 2000; and

**WHEREAS**, the American Legislative Exchange Council (ALEC) is committed to developing effective criminal justice policies that create safe communities for citizens as well as strong state budgets; and

**WHEREAS**, the current probation system has proven to be ineffective in that nearly 40% of probationers across the nation fail to successfully complete probation; and

**WHEREAS**, spending on corrections has been a leading factor in rising state budgets for 15 years; and

**WHEREAS**, by notifying probationers that violations will be dealt with swiftly and surely, by conducting frequent random drug tests, issuing swift and certain sanctions for every violation, and by administering drug treatments to those who need it, the HOPE program has experienced unprecedented success; and

**WHEREAS**, studies have shown HOPE probationers to be 53% less likely to have their probation revoked, and 61% less likely to miss appointments with probation officers; and

**WHEREAS**, HOPE probationers have proven to be 72% less likely to use drugs, and 55% less likely to be arrested for a new crime;

41 **THEREFORE BE IT RESOLVED** that ALEC supports the HOPE program and its success,  
42 and recommends that actions be taken which will replicate its remarkable results in other  
43 jurisdictions.

## **Resolution in Support of Justice Reinvestment**

### ***Summary***

State spending on corrections has grown faster than almost any other budget item in the past 20 years, reaching nearly \$52 billion dollars in tight economic times. Prison populations have risen dramatically and correction costs have quadrupled. Although prison admissions have begun to decline in recent years, the recidivism rates are still rising, leaving the fiscal status of many state prison systems untenable. Recognizing these problems, justice reinvestment uses research-based policies to save money on corrections, lower recidivism rates and make communities safer. Justice reinvestment has helped states around the nation to cut costs dramatically through better-targeted uses of taxpayer dollars. This resolution supports any policies which would use these proven methods to reduce spending on corrections and reduce recidivism.

### ***Resolution***

**WHEREAS**, justice reinvestment is a data-driven strategy for policy-makers to lower corrections spending, lower recidivism, and improve public safety for citizens; and

**WHEREAS**, the American Legislative Exchange Council is committed to developing effective criminal justice policies that create safe communities for citizens as well as strong state budgets; and

**WHEREAS**, state spending on corrections has grown faster than almost any other budget item over the past 20 years, reaching nearly \$52 billion dollars; and

**WHEREAS**, reinvestment policies work by saving money through criminal justice reforms, and reinvesting a portion of those funds into targeted services that reduce recidivism and prevent prison growth; and

**WHEREAS**, the fastest growing source for prison admissions is people already under correctional control; and

**WHEREAS**, justice reinvestment has yielded striking successes in Connecticut, Kansas, and Texas, while several other states are working to gather initial data; and

**WHEREAS**, justice reinvestment has been proven to lower serious crime rates, decrease the prison population, and ultimately save states millions in correctional spending;

**THEREFORE BE IT RESOLVED** that the American Legislative Exchange Council (ALEC) supports justice reinvestment policies, and urges policy-makers throughout the nation to implement this proven strategy.

## **DRAFT Earned Compliance Credit Act**

## Summary

4 For corrections agencies to efficiently allocate supervision, they must have the authority to focus  
5 their staff, services and sanctions on higher-risk offenders. To do so without additional funding,  
6 agencies need to be able to move lower-risk probationers and parolees to less-intensive levels of  
7 supervision—or off of supervision altogether—if they are fulfilling their obligations and  
8 conditions, including paying restitution. This act creates an “earned compliance credit” that  
9 would reduce the time that offenders are on active supervision by 15 days for each month that  
10 they are in full compliance with their conditions of supervision, including payment of restitution  
11 to crime victims. After an offender has paid all outstanding restitution, fines and fees, the court  
12 or releasing authority may reduce the period of supervision by the amount of credit earned.

## *Model Legislation*

{Title, enacting clause, etc}

## Section 1. {Intent.}

20 The act creates an “earned compliance credit” that would reduce the time that offenders are on  
21 active supervision by 15 days for each month that they are in full compliance with their  
22 conditions of supervision, including payment of restitution to crime victims. After an offender  
23 has paid all outstanding restitution, fines and fees, the court or releasing authority may reduce the  
24 period of supervision by the amount of credit earned.

**Section 2. {Definitions.}** In this title, the following words have the meanings indicated.

(1) “Agency” means:

- (A) The Department of Corrections or the state agency responsible for supervising individuals placed on probation by the courts or serving a period of parole or post-release supervision from prison or jail; and
- (B) Any regional, local or county governmental agencies responsible for supervising individuals placed on probation by the courts or serving a period of parole or post-release supervision from prison or jail, provided such agencies receive state funding.

(2) "Case plan" means an individualized accountability and behavior change strategy for supervised individuals that:

(A) Targets and prioritizes the specific criminal risk factors of the offender;

40 (B) Matches programs to the offender's individual characteristics, such as gender,  
41 culture, motivational stage, developmental stage, and learning style;  
42 (C) Establishes a timetable for achieving specific behavioral goals, including a  
43 schedule for payment of victim restitution, child support, and other financial  
44 obligations; and  
45 (D) Specifies positive and negative actions that will be taken in response to the  
46 supervised individual's behaviors.

47  
48 (3) "Compliance credit" means [15] days for every month that a supervised individual  
49 does all of the following:

50 (A) Fulfills the terms of the supervised individual's case plan;  
51 (B) Has no new arrests; and  
52 (C) Makes scheduled monthly payments for restitution, fines and fees.

53  
54 (4) "Supervised individual" means an individual placed on probation by the courts or  
55 serving a period of parole or post-release supervision from prison or jail.

56  
57 **Section 3. {Earned Compliance Credits.}**

58 (1) The Agency shall:

60 (A) Award earned compliance credits to a supervised individual who satisfies the  
61 requirements specified in the individual's case plan; and  
62 (B) Place a supervised individual in a non-active supervision status for the  
63 number of days earned as compliance credits.

64  
65 (2) For supervised individuals in non-active supervision, the Agency shall submit a  
66 petition to the court or releasing authority to request that the period of supervision be  
67 reduced by the number of days of compliance credits earned by the individual, when the  
68 supervised individual has no outstanding restitution, fines or fees.

69  
70 (3) The court or releasing authority may adjust the period of a supervised individual's  
71 supervision on the recommendation of the Agency for earned compliance credits.

72  
73 (4) The Agency shall adopt rules and regulations for the forfeiture of earned compliance  
74 credits for supervised individuals who violate conditions of supervision. Such regulations  
75 shall provide that:

76 (A) Forfeiture is part of the Agency's system of graduated sanctions;  
77 (B) The extent of earned compliance credits forfeited is related to the level of  
78 severity of the violation;

79 (C) Forfeiture of earned compliance credits is limited to credits already earned,  
80 and may not prospectively deny future earned compliance credits; and  
81 (D) A procedure is established for the restoration of forfeited earned compliance  
82 credits based on the supervised individual's compliance with supervision  
83 conditions and progress in achieving the goals of the supervised individual's case  
84 plan.

85

86 **Section 4. {Severability Clause}**

87

88 **Section 5. {Repealer Clause}**

89

90 **Section 6. {Effective Date}**

## **Item of Interest 1 – Background Information for ALEC Resolution on DNA Testing Standards**

### **Background for ALEC Resolution to Change Standard 17**

Standard 17 of the current FBI quality assurance guidelines requires public labs to take ownership of private lab data and perform a complete technical review of each case with a CODIS up-loadable profile before the results can be uploaded to CODIS as well as perform a site visit to each private lab it works with.

This guideline exists despite the fact that public labs and private labs must otherwise meet the exact same quality guidelines and obtain the same accreditation in order to be qualified to analyze evidence for DNA profiles that can go into CODIS. In addition, to date there is no empirical study by a third party showing a difference in errors detected between public and private labs when an extra technical review is performed. Finally, LAPD and LASD, the labs with the most experience working with private labs, have not detected meaningful errors as a result of this process. LAPD has written Congress and the FBI to that effect and Los Angeles Congressman Adam Schiff (D) testified to the same for Congress on May 20.

In an effort to more cost-effectively work with private labs and reduce/eliminate the DNA testing backlog, there have been many efforts by individual groups and organizations to modify Standard 17 including former LAPD police Chief Bratton, Congressmen Schiff and Lundgren, and the IACP. However, this is the first time that victims groups (e.g., NCVC, HEART, RAINN) and law enforcement groups (e.g., FOP, IACP, NSA) are working simultaneously to voice their concern about this problem. As a result of these concerns, Senator Leahy, in his opening statement at the December Senate Judiciary Committee meeting mentioned the need to address this issue and several members of the house and senate judiciary committees have since been briefed.

On March 23, the FBI issued a press release stating that it is currently “re-evaluating existing policies, standards and protocols, to include requirements for outsourcing DNA analysis to private laboratories and review of their results by public law enforcement laboratories.”

Since that press release, there have been three cautions public labs have made in written statements regarding the potential to change Standard 17.

1) Private labs should not be given direct access to CODIS as part of these changes. This is a fair concern; however, Standard 17 can be modified to relieve public labs of the burden to review private lab work without giving private labs direct access to CODIS. Results can still be uploaded to CODIS by the public lab or alternatively through a clearinghouse operated by the FBI (the act of uploading is not a time consuming activity).

2) The best way to solve the backlog is for the federal government to give the public labs more money. While this may or may not be true, nothing about changing Standard 17 has a direct impact on the amount of money the Federal government makes available to public labs. Changing Standard 17 does not cost any money or siphon valuable resources away from the public labs. In fact, changing Standard 17 frees up public lab resources so that more time can be spent completing cases.

3) Because private industry is for profit, it is not trustworthy and that only public labs can be trusted to complete analysis without an independent agency rechecking their results. There is no empirical evidence that supports this assertion. And in fact, while private labs are not free from error, the list of public forensic labs that have been cited for making errors in the last several years is long and includes labs from MI, TX, MA, IL, NV, NC, NY, CA, MD, WA, and VA as well as the FBI lab.

It should also be noted that changing this regulation in no way prohibits a public lab from performing this third review should they deem it necessary. It only eliminates the federal requirement to do so.

Congress has taken this issue seriously enough to dedicate several witnesses heard at the May 20 hearing on the Rape Kit backlog to this issue and Orchid Cellmark testified on this point at the hearing. During that hearing the FBI stated they were working this issue but it could take a year to resolve; however, the working group addressing this issue was limited to public lab personnel (and the FBI). No representation from victim's groups, law enforcement, or private labs is on this working group.

To ensure that this effort for change moves forward, it is important the FBI and congress hear from local law enforcement and state legislatures regarding their views on this issue.

**Item of Interest 2 – Background Information for ALEC Resolution on DNA Testing Standards**  
**National Institute of Justice (NIJ) memo**

August 4, 2005

MEMORANDUM TO: Uttam Dhillon  
Associate Deputy Attorney General  
Office of the Deputy Attorney General

FROM: Sarah V. Hart  
Director  
National Institute of Justice

SUBJECT: DNA Backlog

Pursuant to your directive, the National Institute of Justice (NIJ) convened scientific experts and members of the crime laboratory community to address the issues that have arisen on the Hill and elsewhere concerning the DNA backlog. You asked NIJ to have the group address the new quality assurance audit requirements for convicted offender samples (100 % review and limits on the use of contract staff) and whether vendor laboratories should be able to upload convicted offender DNA profiles directly into DNA databases. The following discussion is based on the information these scientists and crime labs provided, their perspectives about the new audit requirements, and NIJ's suggestions for options to address the concerns they have raised.

### **Summary**

In 2004, the Federal Bureau of Investigation (FBI) updated its quality assurance audit documents to establish two new provisions. Specifically, these new provisions require crime laboratories to perform in-house reviews of 100% of their convicted offender database samples and mandate that all reviews of contractor data be done by government employees. The purported reason for these requirements is to prevent the Combined DNA Index System (CODIS) from failing to match a forensic sample profile to a convicted offender profile.

These new requirements have caused major problems for the state and local crime laboratory community. Tens of thousands of convicted offender profiles have been removed from the National DNA Index System (NDIS), thereby preventing serious crimes from being solved. The burden of these requirements has increased the backlog of convicted offender samples, cost millions of dollars, and forced crime laboratories to remove staff from analyzing rape kits and other forensic samples. This year alone, these requirements may add up to \$5 million to the cost of convicted offender database sample analysis. It is estimated that these reviews by in-house personnel may prevent the analysis of up to 8,000 forensic samples. Much of these costs will be absorbed by NIJ grants to assist crime laboratories through the President's DNA Initiative and Coverdell funding.

The incredible public safety and financial costs might be justified if these new quality assurance requirements had the benefits the FBI touts. However, a detailed analysis of almost 170,000 convicted offender profiles at issue demonstrates that **not a single mismatch would have been prevented by these new requirements**. In this analysis, 113 profiles were found to have errors. Given the CODIS software matching abilities and the minor nature of the errors, CODIS would still have correctly matched all 113 profiles to a corresponding forensic sample profile.

The private laboratories under contract to NIJ are subject to very strict quality assurance requirements (accreditation, independent audits, training requirements, proficiency testing for analysts, technical reviews of 100% of convicted offender samples, and administrative reviews of 100% of convicted offender samples). As part of its oversight responsibilities for convicted offender contracts, NIJ conducts performance reviews to check for quality assurance and contract compliance at vendor laboratories. Thus, the redundant reviews mandated by the FBI are unwarranted.

The Department should ensure that NDIS is administered to maximize the benefit to public safety and minimize taxpayer costs. To address this problem and prevent future problems from occurring, NIJ recommends:

- Profiles should be included in NDIS and other databases pending technical reviews so that matches can be made.
- The NDIS Board should be reconstituted to better represent the views of the State and local crime laboratory directors and other components of the Department of Justice (DOJ).
- All quality assurance and audit requirements should be: (1) approved by the reconstituted NDIS Board; and (2) be consistent and not increase the quality assurance requirements established by the Director's standards.
- The Department should direct the FBI to stay the redundant 100% review requirement and contractor prohibition until a reconstituted NDIS board has approved these provisions.
- The NDIS Board should expedite approval of expert systems for quality assurance review purposes.

## Background

### *CODIS Is an Investigatory Tool*

All crime laboratories use CODIS software to match DNA profiles to offender and forensic database entries. CODIS functions at three levels: local (LDIS), state (SDIS), and national (NDIS). Essentially, CODIS is an intelligence database used to make linkages between forensic evidence and suspects. A CODIS hit is always verified by reanalysis of the original offender sample prior to reporting the hit to the investigating agency for a case. CODIS enables Federal, State, and local crime labs to exchange and compare DNA profiles electronically, thereby linking crimes to each other and to convicted offenders. There are currently over 2.5 million profiles in NDIS, including 111,926 forensic profiles and 2,430,007 convicted offender profiles. Through June of this year, CODIS had assisted 25,458 investigations.

### *Statutory Requirements*

The statutory provisions governing quality assurance standards are found at 42 U.S.C. Sec. 14131 & 14132. The FBI Director is given the power to:

1. establish quality assurance standards;<sup>1</sup>
2. establish NDIS;<sup>2</sup>
3. limit the information in NDIS to DNA profiles
  - a. developed by “analyses by or on behalf of a criminal justice agency”;<sup>3</sup>
  - b. prepared by laboratories that will be accredited by October 2006 and undergo external audits every two years;<sup>4</sup>
  - c. maintained by criminal justice agencies that comply with disclosure limitations;<sup>5</sup> and .
4. cancel access to NDIS if the quality control and privacy provisions are not met.<sup>6</sup>

### *NDIS Quality Assurance Standards*

In 1998 the FBI Director issued the DNA Quality Assurance Standards (QAS) to ensure the quality of DNA profiles generated from offender reference and forensic casework samples. The QAS provides minimum requirements for laboratory practices, personnel, and data review that all laboratories must meet in order to submit profiles to the National DNA Index System. The QAS and NDIS are administered through an NDIS Board managed by the FBI Laboratory. All public and private laboratories that do forensic analysis are subject to NDIS Board review of their compliance with the QAS.

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<sup>1</sup> See, Section 14131 a(2) (“The Director of the [FBI]...shall issue (and revise from time to time) standards for quality assurance, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA.”).

<sup>2</sup> See Section 14132 (a).

<sup>3</sup> See Section 14132 (b)(1).

<sup>4</sup> See Section 14132 (b)(2).

<sup>5</sup> See Section 14132 (b)(3).

<sup>6</sup> See Section 14132 (c).

As previously demonstrated, the plain language of the Quality Assurance Standards approved by the FBI Director do not require 100% review of the convicted offender profiles. They also do not restrict the use of contract personnel by a State or local crime laboratory, these requirements first appear in the 2004 audit requirements documents described below.

To develop and administer quality assurance requirements and enforce their provisions, the FBI maintains the Scientific Working Group on DNA Analysis Methods (SWGDM) and the NDIS Board, composed of five FBI Laboratory personnel and five State and local crime laboratory personnel chosen by the FBI. There is no statutory requirement for an NDIS Board or to establish separate audit requirements. Nor is there any statutory requirement for SWGDM. The program is managed by an FBI Laboratory employee designated as the NDIS Custodian.

#### *2004 Audit Requirements*

Although the QAS have never been altered since their inception, the FBI did publish an audit document in 2000 to provide a framework to review whether individual laboratories are in conformance with the standards. The FBI updated that document in July 2004 to, among other requirements, establish that:

- Convicted offender laboratories must demonstrate 100% technical review of database samples from contract laboratories. An NDIS-approved and internally validated expert system can be used to interpret and review. This requirement is in addition to the reviews of 100% of the data by the contract laboratories.
- The required technical review must be done by government employees of an NDIS-participating laboratory, not by contractor personnel.

#### *Impact of 2004 Audit Requirements*

These two requirements have contributed to large increases in the backlog of convicted offender samples awaiting upload to NDIS in many states, despite large investments by the National Institute of Justice in the analysis of offender samples. These requirements have provided little or no public benefit, cost state laboratories large amounts of money, delayed the resolution of casework and offender analysis, delayed or prevented the identification of violent criminals, and may prevent full achievement of the objectives of the President's DNA Initiative.

### **What is the Purported Benefit of 100% Review?**

The FBI advocates for 100% review of convicted offender profiles. According to members of the Scientific Working Group on DNA Analysis Methods, significant issues have been observed at contract laboratories, including inaccuracies, contamination, misinterpretations, inadequate training, failure to follow standard operating procedures, and willful disregard of contractual obligations. As the administering agency for the vast majority of the convicted offender contractors, NIJ has observed all of these issues first-hand. In fact, NIJ has observed these same issues in in-house convicted offender analysis as well. Such issues will continue to be of concern as long as DNA analysis is done by public and private laboratories. More critically, one must consider what level of review will provide the most public safety benefit in a cost-effective manner.

In principle, 100% review reduces the number false mismatches (false negatives) in the system, increases the perceived confidence in the quality of a hit, and lowers operating costs by reducing the need to follow up on incorrect matches. Of course, there are costs to 100% review. Any review uses personnel, creates delays in reducing convicted offender and forensic casework backlogs, and requires funding.

In practice, it is not necessary to perform 100% reviews of offender data to improve the confidence in a CODIS hit. Prior to the imposition of the new requirements, states ensured the quality of offender data by several means. Specifically, as stated in the QAS, they verified the integrity of the data received from a contract laboratory by:

- a. Random reanalysis of samples;
- b. Visual inspection and evaluation of the results/data;
- c. Inclusion of quality control samples;
- d. On-site visits.

In addition, all CODIS hits are used only as investigative information. No one is arrested, charged, tried, or convicted based on an unconfirmed CODIS hit. All states require that the offender sample be retrieved from the DNA repository, retested, and shown to match before release of the identifying information to the investigating agency. In addition, incorrect matches are extremely uncommon in CODIS in comparison to other forensic databases, such as those for fingerprints or ballistics. Most CODIS searches are made on "moderate stringency" so that profiles do not have to be identical to be considered a match. In many cases, CODIS may detect an exact match at only 11 or 12 of the 13 STR DNA loci used in the system. These differences can easily be explained by a DNA analyst. Even at less than 11 loci, STR analysis still provides extremely powerful statistical exclusion, so that false positives are extremely rare. With appropriate follow-up, no false positive should ever occur.

For these reasons, CODIS is designed to reduce the probability of a false exclusion; i.e., the case in which one misses the true perpetrator of a crime. Review of 100% of offender samples therefore can only be justified on the basis of minimizing false exclusions. NIJ collected data from 19 states to examine this concern,. These 19 states have performed reviews of 373,226 offender profiles and discovered 131 profiles with technical issues. In the worst case, only 0.04% of samples would be affected by 100% data review. Three states contributed 113 of the issues of concern-Texas, Massachusetts and Illinois. NIJ analyzed these 113 profiles in detail to determine if a false exclusion would have resulted in the absence of a review. **CODIS would have produced no false exclusions in these cases.**

State	Profiles Reviewed by State Laboratory	Profiles with Issues	Type of Issue	Would Database Hit have been Missed
Texas	134,000	1	Peak Imbalance	No, profile would have been entered and produced "high" stringency match.
		3	Heterozygote reported as Homozygote	No, missing allele reduces match from "high" to "moderate" stringency.
		5	Binning issue, i.e., true allele was a 23.3 or 24.1 but it was called a 24	No, CODIS software is designed to account for binning issues, will result in a "high" stringency match.
Massachusetts	6,319	3	Heterozygote reported as Homozygote	No, missing allele reduces match from "high" to "moderate" stringency.
		1	Tri-allele	No, additional allele reduces match from "high" to "moderate" stringency.
Illinois	28,944	15	Contamination	No, would have been flagged by CODIS and rerun.
		2	Incorrect Quality Control sample profile	No, QC samples are not entered into CODIS.

		50	Heterozygote reported as Homozygote	No, missing allele reduces match from "high" to "moderate" stringency.
		21	No primer-dimer peaks in blanks	No, profiles would have been entered and produced "high" stringency match.
		3	Duplicate profiles	No, duplicate profiles would have been identified by CODIS search.
		2	Vendor number used rather than original sample number	No, profiles would have been entered into CODIS and sample labeling issue would have been resolved with analysis of original sample to confirm CODIS hit.
		4	Tri-allele	No, additional allele reduces match from "high" to "moderate" stringency.
		3	Profile data missing from Genotyper file, but was in CMF file for CODIS upload	No, all profiles would have been entered into CODIS from CMF file.
<b>Total</b>	<b>169,263</b>	<b>113</b>		<b>Total false exclusions: 0</b>
16 States Responding to NIJ Survey	203,981	18		
Total of 19 States	373,244	131		

Quite clearly, 100% review by these states provided no improvement in the quality or integrity of the data and no public safety benefit. Based on this data, 99.96% of data received from contract vendor laboratories meets all quality assurance requirements for entry into NDIS. Only four in every 10,000 samples analyzed would need any kind of further review. None of these profiles would have resulted in a false positive or false negative.

The Department of Justice Office of Inspector General (OIG) has conducted audits of public and contract laboratories to determine compliance with standards governing CODIS. In most cases, they have examined 100 forensic and 100 convicted offender DNA profiles. Of the nine state laboratory audit reports NIJ was able to obtain from the OIG, no technical errors were found in any convicted offender samples. In Nebraska, the OIG found two profiles that were from individuals who did not have a qualifying offense. This type of error would not be discovered in the technical review process. OIG found significant errors in forensic casework profiles uploaded to NDIS, but it is generally agreed that forensic casework profiles deserve 100% review because of the nature of these samples. Therefore, OIG's review has found no basis for the new requirements of the QAS.

Other communities face similar quality assurance problems and have taken very different approaches. In the biomedical community, very similar DNA analyses are done for bone marrow transplant work and blood disorders. In these cases, large STR databases are constructed and false negatives could prevent saving the life of a critically-ill person. For these analyses, the Harvard Institute of Proteomics initially reviews 10-15% of profiles, then cuts the review to 1 to 2% once the system has been validated. Another institution, Genomics Collaborative, relies on 10% review. Cubis Pharmaceuticals performs less than 25% reviews for drug quality assurance and clinical trials. NIJ was not able to find an industry standard for 100% review.

### **Costs of 100% Review**

NIJ examined the effect of 100% review in five states-Massachusetts, Texas, Illinois, West Virginia and Louisiana. The FBI has contacted each of these states either verbally or in writing to enforce the new provisions of the QAS audit document.

- *Massachusetts*

The FBI ordered the Massachusetts State Crime Laboratory to remove 15,586 convicted offender profiles from NDIS in September 2004 because they had not conducted a 100% review of DNA data received from their contract vendor laboratory. Prior to removal, Massachusetts had documented 113 SDIS hits and 19 NDIS hits. To date in Massachusetts, seven DNA analysts have spent eight months reviewing 6,319 samples at an estimated personnel cost of \$132,000. Four samples with technical issues have been identified, as detailed in Table 1. It is estimated that 22 SDIS hits and 10 NDIS hits have been missed in Massachusetts as a result of the delays associated with the review. Because the review has taken analysts from casework, Massachusetts has also not been able to perform an estimated 88 forensic casework examinations during this time. As a result, the crime laboratory has been ordered by the Department of State Police to prioritize forensic casework, upload the offender samples to SDIS only, and perform the NDIS-required reviews whenever possible. As a result, it is unknown when Massachusetts will upload their remaining 9,267 samples back into NDIS.

- *Texas*

In contrast to Massachusetts, the FBI did not require the Texas Department of Public Safety (DPS) to remove its 134,830 convicted offender profiles from NDIS while they completed their 100% data review. Texas DPS estimates that its additional review has cost an additional \$244,870 in personnel expenses. Texas DPS also estimates that they have missed 115 SDIS hits and 11 NDIS hits because they have not had the resources to review and enter other offender profiles that have been analyzed but never loaded into SDIS or NDIS.

- *Louisiana*

In Louisiana, the situation is somewhat different. The New Orleans Police Department is a relatively new DNA facility with only three qualified DNA analysts. New Orleans has one of the highest murder rates in the nation, and the state has allocated significant resources to resolving the severe DNA backlog in that city. The New Orleans DNA Technical Leader and their lead technical reviewer are both contractors and are also the most experienced DNA analysts in the state. They each have more experience than the three qualified DNA analysts combined, but the FBI had directed that these individuals are not eligible to review cases under the NDIS procedures. This prohibition has been applied retroactively, because contract personnel have never been permitted to review outsourced cases. To date, Louisiana has had over 400 CODIS hits and placed 35,590 profiles in NDIS. By restricting the use of contractors for review, the new QAS requirements severely reduce the ability of laboratories to address their backlog. For smaller laboratories like New Orleans, it may end their progress altogether.

- *Illinois*

The Illinois State Police (ISP) sent 109,696 convicted offender samples to a contract vendor laboratory for analysis. ISP estimates that they must devote nine people to complete 100% review of the data at a total cost of approximately \$432,000. Of the first 65,009 profiles reviewed and entered into CODIS, ISP saw 1,043 CODIS hits. Thus, an additional 912 hits may remain among the profiles yet to be reviewed. ISP noted issues with more samples

than any other state, as seen in Table 1. Still, none of the technical issues they detected in their 100% review would have resulted in a missed identification.

- *West Virginia*

Finally, in West Virginia in 2004, the FBI ordered the removal of approximately 4,000 convicted offender samples from NDIS if they were not voluntarily withdrawn. They withdrew all of their samples except approximately 150 that had been tested in the State Police Lab as quality control samples. Prior to withdrawal, West Virginia had eight hits. Since then, they have had only one case-to-case hit. The West Virginia State Police estimate that they will be delayed by at least six months before they can begin the 100% review process.

In these five states, the new requirements have provided little or no public benefit, cost state laboratories large amounts of money, delayed the resolution of casework and offender analysis, and delayed or prevented the identification of violent criminals. In FY2005, NIJ anticipates funding about 600,000 convicted offender samples. Based on the experiences of the states above, the average cost of data review is around \$8 per sample. Thus, the data review for NIJ's 2005 samples may cost approximately \$5 million. In Massachusetts and elsewhere, in-house analysts were unable to perform forensic casework analysis while they reviewed convicted offender data. Based on their experience, the review of 600,000 convicted offender samples may prevent the analysis of up to 8,000 forensic samples. NIJ established the convicted offender contract to give states access to high-throughput analysis facilities and expedite the flow of profiles into NDIS. Unfortunately, the FBI requirements have slowed these profiles to such an extent that many states are now using NIJ capacity enhancement funds to build in-house analysis facilities and bypass the high-throughput laboratories. The impact of these changes remains to be seen.

### ***Should Contract Laboratories be Permitted to Upload Directly to CODIS?***

Separately, some parties have raised the issue that contract laboratories be permitted to upload profiles directly to CODIS. This position has been asserted to Members of Congress.

Although this could be feasible (Great Britain has moved along this route; one university is authorized to upload DNA profiles into the NDIS missing persons index.), NIJ does not support this change. First, it would require legislation and potentially open up a whole host of other issues. Also, NIJ believes that this issue is being driven by a combination of Department of Justice policies that can be addressed internally. NIJ pays for most convicted offender testing and its General Services Administration (GSA) contract does not allow the private laboratory to be paid until the convicted offender profiles are uploaded into NDIS. The new quality assurance requirements have substantially delayed the upload of profiles and have therefore delayed the payment of vendors. Given the millions of dollars involved and the substantial delays, we believe that this is causing vendors to advocate for direct uploads. However, the financial issues can be resolved by eliminating the redundant reviews causing the payment delays and through modifications to the NIJ GSA contracts.

### ***Why Do We Have this Problem?***

There are fundamental issues about the ability of FBI crime laboratory personnel to set objective standards to regulate the entire crime lab community. The FBI Laboratory is an operational laboratory setting the standards that regulate the entire crime laboratory community, including its own staff and workload. Line FBI crime laboratory staff are essentially setting NDIS standards that have the practical effect of dictating an increased demand for crime laboratory FTEs and precluding the use of contract personnel from performing FBI work. For example, this would insulate existing FBI crime laboratory staff from any adverse effects of a competitive sourcing effort (under A-76). However, if the FBI Laboratory's operational employees establish requirements to protect themselves, then all State and local crime laboratories must comply, even if they have smaller budgets, fewer analysts, and much higher forensic casework demands.

Although the FBI and its Scientific Working Group on DNA Analysis Methods should be commended for their work overall, they have not developed flexible policy in this area due to a lack of full coordination with affected parties. SWGDAM is almost wholly a scientific review body without significant representation from crime laboratory directors. On narrow issues related to DNA techniques, this structure works well, but it appears that there is a lack of appreciation of the management challenges faced by crime laboratory administrators in an environment

of immense DNA backlogs and ever-increasing demands for DNA analysis. Further, by limiting data review to current crime laboratory personnel, some SWGDAM members may have inadvertently created the appearance of a conflict of interest, because they are among the few external parties allowed to help a crime laboratory perform data review.

Under the changes, SWGDAM and the NDIS Board may be encouraging a different kind of problem. The revision encourages off-duty work by crime laboratory personnel to review data from other crime laboratories. Most crime laboratories have strict policies about outside employment, especially when it is so closely related to the individual=s forensic work. If that individual fails to properly review a profile in another State or local laboratory, then the profiles may be questioned that are in that person's responsibility in their home laboratory. One may ask whether SWGDAM representatives considered the implications of rules that would invite such problems.

### **What Are the Alternatives to the New Requirements?**

1. *Profiles should be included in NDIS and other databases pending technical reviews so that matches can be made.*

No investigative links occur when profiles are excluded from NDIS as a result of the new requirements. In many cases, states remove profiles from SDIS as well, in order to make sure that no inadvertent uploads to NDIS occur. In no case will an individual be arrested, charged, tried, or convicted based on an unconfirmed CODIS hit. Therefore, there is no public or private benefit from exclusion of a sample from NDIS on the basis of the new review requirements. The FBI has recognized this in Texas, which was allowed to keep its profiles in NDIS while reviews occurred, but not in West Virginia or Massachusetts.

2. *The NDIS Board should be reconstituted to better represent the views of the State and local crime laboratory directors and other components of DOJ.*

The current NDIS Board is composed of FBI personnel and State and local crime laboratory representatives chosen by the FBI. The NDIS Board should reflect the broad interests of the DNA forensic community. Therefore, it should be composed of a majority of external individuals approved by the Attorney General, including State and local crime laboratory directors, an FBI representative, SWGDAM representative, Office of Legal Policy representative and an NIJ representative.

3. *All quality assurance and audit requirements should be approved by the reconstituted NDIS Board and, after comment by other DOJ components, the FBI Director. They must be consistent with (and not expand the requirements of) the standards approved by the FBI Director.*

No changes should be made to the QAS or associated audit requirements unless approved by the reconstituted NDIS Board. Changes to these requirements should be vetted through a broad group of individuals with a perspective beyond purely technical or scientific considerations. The requirements should not be inconsistent with nor materially change the standards approved by the FBI Director. The FBI Director should be able to consider the potential impact of proposed requirements on laboratory operations, public safety, the use of federal funds, and DOJ policy.

4. *The Department should direct the FBI to stay the redundant 100% review requirement and contractor prohibition until a reconstituted NDIS Board and the FBI Director have reviewed and approved these provisions.*

Because the requirements have been shown to provide no value with respect to data quality, the Department should intervene to ensure that the President's DNA Initiative can be fully implemented and the public safety maintained.

5. *The NDIS Board and the FBI Director should expedite approval of expert systems for quality assurance review purposes.*

The QAS and associated audit documents anticipate the expert computer systems will be developed to provide the appropriate level of technical review without human intervention. NIJ has formed a working group in collaboration with the FBI to evaluate available expert systems. If this working group recommends the approval of specific expert systems, the NDIS Board should immediately expedite their use for quality assurance review purposes. It should be noted that states will still be required to validate expert systems within their own facility before they are used to review data for inclusion in NDIS.

### **Conclusion**

Please advise us if you would like additional information on this issue.

cc: Cybele Daley  
Richard Hertling  
David Karp  
Dwight Adams  
John Morgan

**International Association of Chiefs of Police (IACP) DNA Resolution**

**Forensics**

**DNA Analysis Verification**

*Submitted by Forensic Science Committee*

WHEREAS, DNA technology has revolutionized forensic identification, and the ability to assist with identifying the guilty and exonerating the innocent; and

WHEREAS, significant backlogs, often stretching into months, of DNA analysis exist in many crime laboratories; and

WHEREAS, funding is available to outsource those analyses to reputable private laboratories in order to obtain a DNA profile in a reasonable length of time; and

WHEREAS, the results of those analyses by independent, private laboratories must be reviewed by an analyst in a public, law enforcement crime laboratory in order to meet the FBI Quality Assurance Standards Case Review protocol before being uploaded into the Combined DNA Index System (CODIS); and

WHEREAS, this review and verification is a very time-consuming and redundant process that consumes a great deal of laboratory analysis time; now, therefore, be it

RESOLVED that the International Association of Chiefs of Police (IACP) strongly recommends that the Federal Bureau of Investigation (FBI) reexamine its policies with respect to DNA analyses performed by private laboratories who meet all DAB and accreditation standards of public laboratories and permit the public crime laboratory to directly enter the results obtained from the private laboratory without performing a complete case review/verification.

## Press Release

For Immediate Release  
March 23, 2010

Washington D.C.  
FBI National Press Office  
(202) 324-3691

### FBI Laboratory Seeks to Enhance the Efficiency of the National DNA Index System

In order to enhance the efficiency of the nation's DNA database, also known as the National DNA Index System (NDIS), the FBI has established an ongoing dialogue with various groups to gain a broader perspective and better understand the needs of the entire law enforcement community. Those groups include the American Society of Crime Laboratory Directors (ASCLD), the Scientific Working Group on DNA Analysis Methods (SWGDAM), CODIS State Administrators, the Police Executive Research Forum (PERF), the International Association of Chiefs of Police (IACP), and various federal, state, local, and tribal agencies. The FBI is committed to seeking common ground in the interest of protecting the public, reducing backlogs, ensuring privacy, and maintaining the integrity of the National DNA database.

Many public law enforcement agencies collaborate with private laboratories for analysis of their DNA samples. The FBI Laboratory is currently re-evaluating existing policies, standards, and protocols, including requirements for outsourcing DNA analysis to private laboratories and review of their results by public law enforcement laboratories. Private laboratories continue to be an integral part of the process and share in the success of NDIS. The current policy assessment will focus on these contributions and will engage both public and private laboratories.

The administration and operation of the National DNA database is an inherently governmental function that supports criminal investigations conducted by our federal, state, local, and tribal law enforcement partners. Therefore, the FBI's assessment does not include re-evaluating access to NDIS. Necessary improvements can be gained by enhancing the efficiency of NDIS procedures.

DNA analysis and, by extension, DNA databases, have proven to be invaluable to the law enforcement community and to victims of violent crimes and their families. Since more violent crimes are solved as more records are placed into the database, enhancing the operational procedures for optimal efficiency of NDIS is imperative.

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Friday, May 14, 2010

Contact: Maureen Shanahan (202) 225-4176

**Rep. Schiff and LA Members Ask AG Holder and FBI Director Mueller to Develop Immediate Solutions to Expediently Process Remaining Sexual Assault Evidence Kits**

**Washington, DC** – With Los Angeles struggling to eliminate a backlog in the processing of more than 7,000 rape kits – the evidence collected from the crime scene and victim’s body after a rape report – Rep. Adam Schiff (D-CA) and members of Congress from the Los Angeles area sent a letter to Attorney General Eric Holder and Federal Bureau of Investigation (FBI) Director Robert Mueller asking that they work with the City of Los Angeles to develop immediate solutions to expediently process remaining sexual assault evidence kits. In the City of Los Angeles alone, 1,700 kits were awaiting a technical review on March 1, and that number is only growing.

“The thousands of sexual assault evidence kits currently awaiting technical review could be uploaded into the national database much more quickly in a reformed technical review process,” Rep. Schiff said. “We believe that Los Angeles can serve as a pilot to demonstrate the feasibility of alternatives, taking dangerous people off the street, speeding justice for victims of assault, saving scarce resources, and improving our use of DNA technologies.”

The City of Los Angeles has attacked its backlog by sending evidence kits to accredited private laboratories, which process the evidence, identify any possible suspect DNA profiles, and send it back to the LAPD’s crime lab. Unfortunately, FBI rules require a time-consuming, manual review by the LAPD lab before a kit can actually be uploaded into the national database (called CODIS) to be matched against possible suspects. Of the thousands of kits that have received technical reviews by the LAPD, none has identified a mistake that would impact the integrity of the DNA database or allow a rapist to go undetected. After years of resistance, the FBI has agreed to look at the technical review rules to make them less onerous on law enforcement.

“We welcome this development, but for Los Angeles, the six months to a year that it will take to undertake this review is simply too long,” Rep. Schiff said. “It will result in millions of dollars in unnecessary spending and, most importantly, it will slow the process of identifying potential suspects in these assaults.”

“Closing the rape kit backlog requires a sustained commitment,” said Los Angeles Mayor Antonio Villaraigosa. “Congressman Schiff’s leadership has been invaluable in pushing to revise current rules to provide immediate financial relief for the City and bring swifter justice for rape victims.”

“Failure to upload results into CODIS in a timely manner denies the investigators access to valuable investigative information and justice for crime victims, allowing criminals to continue to roam and prey on society,” said Los Angeles Police Chief Charlie Beck. “Although we’ve made substantial progress in eliminating the backlog, the current requirement for a law enforcement lab to verify the outsourced results is redundant, bureaucratic, and defeats the purpose of outsourcing. We hope Congressman Adam Schiff’s attention to this important issue will result in new procedures that will allow us to utilize our resources more efficiently and identify potential suspects in Los Angeles.”

Below is the full text of the letter sent to Attorney General Holder and FBI Director Mueller:

May 11, 2010

Dear Attorney General Holder/Director Mueller:

**Item of Interest 5 – Background Information for ALEC Resolution on DNA Testing Standards**

We write as Members of Congress from the Los Angeles area with a commitment to law enforcement and the rights of sexual assault victims. As you know, Los Angeles has been struggling to eliminate a backlog of thousands of sexual assault kits that have waited years for processing. Through a joint federal and local effort, the end is finally in sight for the rape kit backlog, in large part because the City has dedicated substantial resources to outsourcing the extraction of suspect DNA profiles to accredited private laboratories.

However, due to burdensome and unnecessary technical review requirements required by the *Quality Assurance Standards for Forensic DNA Laboratories*, there is a second backlog of cases developing. These are kits that have been returned to the public lab, but due to a lack of resources and manpower they wait months to be uploaded into CODIS. In the evidence that awaits review, there are doubtless profiles of offenders who will continue to walk the streets and assault additional victims while this evidence awaits entry to CODIS. In the City of Los Angeles alone there were 1,700 kits awaiting technical review on March 1, and the number is only growing.

We appreciate that the FBI announced in March a review of the technical review rules with an eye towards revising them later this year. We eagerly await further details as to what the review will entail. However, in the meantime, the problem in Los Angeles is more pressing than the months or years this review could take. The LAPD has performed thousands of technical reviews on rape kits already, and they have not found a single error by a private lab that would impact the integrity of CODIS or allowed a suspect to escape scrutiny. The Los Angeles Sheriff's Department has a similar experience.

We are concerned that even the most aggressive timeline will result in months of delays in the closing of the rape kit backlog in Los Angeles and cost millions of scarce budget funds. For that reason, we ask that you work with the City of Los Angeles to develop immediate alternatives to 100 percent technical review. The thousands of sexual assault evidence kits currently awaiting technical review could serve as the proof of concept for a reformed technical review process. We believe that Los Angeles can serve as a pilot to demonstrate the feasibility of alternatives, thereby speeding justice for victims of assault, saving scarce resources, and improving our use of DNA technologies. We are eager to work with you to make this vision a reality, along with Mayor Villaraigosa and the leadership of Los Angeles.

Your timely consideration of this matter is appreciated.

Sincerely,

Rep. Adam Schiff

Rep. Howard Berman

Rep. Henry Waxman

Rep. Lucille Roybal-Allard

Rep. Linda Sanchez

Rep. Laura Richardson

Rep. Diane Watson

Rep. Dana Rohrabacher

Rep. Judy Chu

Rep. Jane Harman

# ORCHID CELLMARK

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May 20, 2010

Representative John Conyers, Chairman, Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, D.C. 20515

Representative Lamar Smith, Ranking Member, Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, D.C. 20515

Mr. Chairman and Representative Smith:

My name is Dr. Jeff Boschwitz. I am a Vice President and executive officer of Orchid Cellmark Inc., one of the largest worldwide providers of human DNA testing. On behalf of Orchid Cellmark, we would like to thank you for the opportunity to provide testimony on this important subject. Orchid Cellmark was one of the originators of the DNA technology used today for human identity testing and has a reputation for delivering the highest quality testing. In addition, we are the only private lab with a significant presence in both the US and the UK. As a result, we believe we are uniquely positioned to share insights on the rape kit backlog issue with the Committee.

Before we begin, we want to first commend the Committee for its leadership in issues involving the use of DNA testing on crime scene evidence as a means of aiding in establishing the guilt or innocence of the accused. It is particularly to be commended for scheduling this hearing on “Rape Kit Backlogs: Failing the Test of Providing Justice to Sexual Assault Survivors”

The DNA testing backlog continues to grow despite the hundreds of millions of dollars invested to eliminate it. The most recent data shows that the backlog of cases submitted to a crime lab for testing reached over 70,000 cases in 2008, up from 24,000 in 2005 <http://dna.gov/backlog-reduction/>. This does not count the estimated hundreds of thousands of rape kits that have never been submitted to the crime lab for testing. One of the concerns raised about testing these rape kits sitting in police storage as well as the cases submitted to the crime lab is that there are not sufficient financial resources to meet this incremental testing demand and that these resources are not likely to be available in the current economic climate. While incremental funding would certainly be of benefit, we would like to focus our testimony on specific regulatory changes that can be made to increase the available resources without incremental spending.

## **Obstacles to More Effective Public-Private Partnerships for DNA testing**

Although public-private partnerships for DNA testing exist today and have been successful in addressing many of the nation’s backlogs (including the backlog in Los Angeles), there are current guidelines (the FBI Quality Assurance Standards for Forensic DNA Testing Laboratories: Effective July 1, 2009) that create significant obstacles to these partnerships and, at best, make them very inefficient for the public lab and the taxpayer. The FBI, recognizing the concerns of law enforcement on these guidelines, announced on March 23 that it is currently re-evaluating these policies. We would like to discuss these policies and the potential impact of changes to these policies.

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Under the current regulations developed by the FBI (Quality Assurance Standards for Forensic DNA Testing Laboratories: Effective July 1, 2009), public labs and private labs must meet the exact same accreditation and quality assurance standards for the data they generate from forensic DNA testing to be eligible for upload into the Combined DNA Index System, or CODIS. As part of these standards, both public labs and private labs must perform two technical reviews of the data. When the public lab has completed that second review, the data is uploaded into CODIS. However, when the private lab has completed that second review, the data is sent to a public lab which is then required to complete a third review of each case before the results can be uploaded into CODIS. No such independent third review of public lab data is required before data they generate is uploaded into CODIS. In addition, public labs must perform at least one site visit to each private lab it utilizes even though these labs are visited annually by the accrediting agency for its audit.

To date, we are not aware of any study performed by an independent body of a representative sample of public and private lab case files to determine if there is a significant difference in error rates between the two lab types. At Orchid Cellmark, we reviewed the last several thousand case files checked by a public lab and found just four reports that had any technical changes made to it, none of which were significant enough to change the result interpretation. Other agencies such as LAPD, which is perhaps the largest public lab user of private labs, have already come to Washington to let legislators know that they do not find meaningful errors upon performing these reviews (LAPD officials want FBI requirement removed to cut backlog of rape kits, Contra Costa Times, April 26, 2010).

The impact of the requirements for 100% technical review and site visit in terms of addressing the rape kit testing backlog are significant. Because public labs do not have extra resources to perform these reviews, they are most often performed using overtime, which makes the cost of doing them significantly more expensive. In addition, because analysts must manage performing these reviews on top of their existing caseload, it can take weeks to months for the reviews to be completed and the data to be uploaded into CODIS. The time it takes to clear this “second backlog” results in an even greater period of time for a serial criminal to remain free and commit additional crimes. Finally, because public labs often do not have the extra resources to perform these reviews, they do not consider public-private partnerships to be a viable option at all and do the best they can to address their backlogs with the resources available even though it may take longer and ultimately cost more money to do so. As an example, the recent 489 case stranger rape backlog in Oakland, CA will not be completed for at least two years (Rape Kit Data, By the Numbers, CBS News, November 9, 2009), even though working with a private lab could lead to backlog completion in less than six months.

In terms of the substance of potential changes to Standard 17, we believe there are four critical elements:

- 1) The requirements for public labs to perform 100% technical review of private lab work and a site visit/audit of each private lab hired should be eliminated.
- 2) If private labs are to be held to a higher standard than public labs, these standards should not place any incremental burden on the public labs. There are many ways to accomplish this, including more stringent proficiency testing, minimum lab experience requirements, and minimum accreditation audit scores.
- 3) Private lab data should be entered into CODIS as it is today (i.e., by the public lab) or through a data clearinghouse managed by the FBI. There is no benefit to the victims or law enforcement to give private labs access to CODIS.
- 4) The requirement for public labs to be responsible for private lab quality and “own the private lab data” should be changed. Private labs should be held accountable for meeting quality standards and suffer appropriate penalties if they fail to meet them.

In discussing potential changes to Standard 17 with over twenty different public labs, we have identified several important concerns (and misperceptions) about modifying Standard 17 that we believe can be mitigated, addressed, or clarified and have included them as an addendum to this testimony.

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### **Use of Private Labs Can Stretch Existing Resources Farther**

As with most other industries where private industry is capable of delivering the service, private industry is a less expensive option for forensic DNA testing.

One study that supports this assertion is the recently completed NIJ study on property crime (NCJ 222318, April 2008). In that study, the variable costs (direct labor and materials only) were measured and estimated to be \$460 per sample (assuming 50% of analyst time was on production-related activities). Orchid Cellmark's published pricing for property crime testing (since the NIJ study) has dropped to as low as \$245 per sample, almost half the cost of public lab variable costs. When considering that the cost of overhead typically adds up to 50% to the cost per sample, this cost difference is exacerbated further.

Orchid Cellmark believes these lower costs will be realized for rape kit testing as well and, for example, can deliver rape kit testing services up to 40% lower than the rape kit testing services charged to the Dallas Police Department by the public lab that services its forensic's needs (which in this unusual instance, charges the Dallas PD for the testing services). Other public labs such as LAPD have had third parties perform internal cost audits and shown that private labs are a less expensive alternative.

The cost savings in public-private partnerships are even greater when the cost of overtime is included. Federal funding through the Debbie Smith Act can only be used by the public sector for overtime (if it is not used for equipment or private labs). Use of federal money for overtime pay is perhaps an option for public labs in these challenging financial times, but it ultimately may not be an optimal utilization of the money for backlog reduction purposes.

In addition, private labs can be significantly less expensive in comparison to public labs that are highly automated. For example, the Texas Department of Public Safety (DPS) DPS has implemented complete automation of its DNA databasing laboratory (to put convicted offender DNA profiles into CODIS) and reduced their costs to \$34 per sample (Texas SB00727). However, recent contracts awarded to private labs for the same testing service have been 15% to 35% lower (depending on contract requirements and factoring in the cost of collection kits). These differences exist because private labs can leverage greater economies of scale and because of private lab R&D efforts to decrease cost in order to remain competitive.

Finally, it is important to point out the extent to which existing federal spending could impact the backlog were it used more for public-private partnerships. For example, if 100% of the FY09 Debbie Smith Act casework backlog reduction money allocation of \$62MM was applied towards private labs, 60,000-70,000 cases could be completed, effectively eliminating the backlog of cases submitted to public labs.

The UK is the ultimate case example of how leveraging the private sector can decrease testing costs while maintaining or improving quality and service. The UK not only holds private and public labs to the exact same quality standards, but also has created a system where the public lab must compete for contracts (based on cost, quality, and service) against private labs. The result has been elimination of the testing backlog, a decrease in testing costs, and contract turn-around time requirements as little as three days for DNA testing of property crime testing and ten days for DNA testing of rape kits.

### **Testimony Costs Do Not add Significantly to Total Public-Private Partnership Costs**

Private labs do charge for expert testimony which, in turn, does add to the cost of service. However, as it stands today, many defense attorneys see little benefit in putting DNA analysts on the stand and infrequently ask for DNA testing-related testimony. In fact, Orchid Cellmark estimates that it is asked to testify, on average, in 2% of the cases it analyzes (even in the months since the Melendez-Diaz ruling). When testimony costs are amortized over all cases analyzed, it only adds about 5% to the total cost of public-private partnerships.

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### Private Lab Capacity

Another concern about public-private partnerships is that private labs do not have the capacity to handle significant volume inflow. While it is true that private labs do not have large amounts of capacity that sits idle today, large private labs have a key structural advantage that enables them to more rapidly expand capacity than public labs. Private labs have the economies of scale and process engineers needed to break the testing process into its individual components such that less experienced people can be focused on areas of the testing process where extensive experience is not required to achieve high quality (e.g., accessioning, inventory) and thus be productive sooner. Orchid Cellmark estimates it could add the capacity to do several thousands more cases a year fairly quickly and that private industry in total could increase its annual capacity by tens of thousands of cases within 12 months. The rapid absorption by private labs of the over 10,000+ cases from the Los Angeles County rape kits backlog is evidence of these advantages.

### Public-Private Partnerships Can Prevent Future Rape Kit Backlogs from Occurring

Facilitating cost-effective public-private partnerships also will help ensure that future backlogs will not occur.

In order for a small public lab to prevent future backlogs from occurring (and most public labs are small, even in high population states, because of the presence of multiple state labs), it must staff to excess capacity to counter the inevitable productivity delays caused by employee turnover, equipment/contamination problems, the unexpected complex, high profile cases with hundreds of samples, and the inherent unevenness of forensic DNA testing demand. Otherwise, backlogs/delays in testing will inevitably occur as these issues arise. The cost to the taxpayer to maintain excess capacity to deal with the lumpiness in productivity and testing demand is often difficult to justify.

Alternatively, in an effective public-private partnership, the public lab can staff to ensure that all high-profile cases and other cases not amenable to high-throughput processes or remote processing can be done locally, and use private labs for cases amenable to high-throughput such as no-suspect rape cases and property crime. When high-profile crime is down, the public lab can take back some of the work it sends to the private lab to fill its capacity.

Alternatively, when there are unexpected surges in crimes or turnover in the public lab or other local issues that cause productivity in the public lab to decline below optimal levels for a time (e.g., as reported by the Delaware State lab; Delaware Online, October 18, 2009), private labs can rapidly expand capacity on a temporary basis to deal with this demand without the need for the investment in costly incremental infrastructure.

The importance of having this capacity flexibility is reinforced by the recent report showing that law enforcement does not submit a significant amount of evidence for DNA testing that might otherwise be submitted if capacity was there (NCJ 2228415, October 2009). In fact, in 2007 alone, it was estimated that 1.4 million property crimes had forensic evidence that was not submitted. This “holding back” of forensic testing is one reason why many public labs that start to catch up on their backlog quickly get behind again as demand for testing unexpectedly increases as service levels improve. Maintaining a cost-effective public-private partnership for these high volume, no-suspect cases (even when the backlog is reduced), gives states the ability to more rapidly adjust to changing demand and prevent the violent crime backlog from building. It also can prevent rapes and homicides from occurring as many burglars progress to violent crimes.

### Summary

In summary, it is well understood that there is a lack of public lab resources to adequately address the rape kit testing backlog. While there are many avenues to address this issue, including more widespread implementation of automation and additional funding, Orchid Cellmark believes that private laboratories are an underutilized cost-effective resource and creating guidelines that facilitate public-private partnerships is an inexpensive solution to backlog reduction that can play a major role in this endeavor.

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Very truly yours,



Jeffrey S. Boschwitz, Ph.D.  
Vice President, North America Marketing and Sales

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Addendum: Addressing Concerns with Changes to Standard 17

***Concern 1) Preserving the integrity of CODIS is of primary concern and modifying Standard 17 puts the integrity of CODIS at risk.***

Changing Standard 17 does not require that private labs have direct access to CODIS. DNA data can be uploaded into CODIS as it is today (by a public lab) or through a clearinghouse maintained by the FBI. Since there is no direct benefit to victims and law enforcement in giving private labs direct CODIS access, it is not necessary to consider options to achieve this end.

***Concern 2) Private labs will directly profit from the modification of Standard 17.***

The cost for private labs to perform DNA testing will be unchanged if Standard 17 is modified so private lab profit per case will also be unchanged. The only impact on cost will be to reduce the public lab costs to work with private labs.

***Concern 3) Private labs, because of their profit motive, are motivated to cut corners and, as such, make mistakes. As a result, all of their work should be checked by a public lab.***

Despite a lack of profit motive, public labs have made many mistakes and several have been shut down as a result (e.g. Houston, Detroit, San Francisco, Baltimore). This is not to say that private labs have been perfect, but there is no objective third party study comparing public and private lab error rates and that lack of a profit motive means corners will not be cut and/or mistakes made.

In addition, the combination of profit motive and competition with other private labs encourages private labs to go the extra mile to ensure quality and maximize their testing success rates as quality is a key mechanism by which they can differentiate themselves from other private labs. Capitalism pushes the private lab to innovate (both in terms of cost reduction and quality improvement).

Also, there is nothing in the proposed modifications that would prohibit a public lab from checking some or all of a private lab's work if the public lab believed it necessary. The proposed modifications only eliminate the federal requirement to do so. The public lab would still have complete control and latitude to perform whatever quality checking it thought was necessary

***Concern 4) Private labs will take over forensic DNA testing if Standard 17 is modified.***

If Standard 17 is modified, public labs will still retain control over the testing process. Under the current guidelines, all private lab work must be pre-approved by a public lab before it can be entered into CODIS.

It is true that this change could have the impact of stimulating competition between public labs and private labs similar to what has occurred in the UK. However, as long as it is in the best interest of law enforcement, the victims, and the taxpayer to do the majority of the work in the public sector (i.e., public labs deliver testing at a lower cost, more quickly, and at a higher quality than private labs), then it is unlikely the workload distribution will change significantly.

***Concern 5) The federal government should spend more money on expanding the capacity of public labs to solve the backlog problem.***

There is nothing within the proposal to change Standard 17 that would prevent the Federal government from allocating more money to public labs. The request only serves to eliminate an unnecessary use of public lab resources to check private lab work and does not siphon any federal dollars away from public labs.

***Concern 6) If the private laboratory goes out of business, it will be difficult to prosecute cases they have worked on.***

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As part of the pre-approval public-private lab relationship process, the public lab can require that the contract signed which governs the relationship with the private lab include a provision that requires the return of all evidence after a designated period of time and that a copy of all data generated be submitted to the approving public lab. This ensures that, if a private laboratory goes out of business, the law enforcement agency will have access to all of the data needed to prosecute a case.

In terms of testimony, former private laboratory employees still must respond to a subpoena to testify the same as former public laboratory employees. If, for some reason, the former private lab employees cannot be found, representatives from the public lab can still testify after reviewing the case file. In fact, in many instances today, the public lab testifies for work the private lab performs even though private lab personnel are available to testify.

**Concern 7) By changing this rule, public labs will be required to work with private labs.**

Nothing about the proposed rule change would inherently change a public lab's freedom of choice in using a private lab to help meet their law enforcement service goals. That decision should still be based on the same criteria used today to determine if this option makes sense (i.e., what testing option serves the best interest of victims and law enforcement).

**Item of Interest 7 – Background Information for ALEC Resolution on DNA Testing Standards**

*Letter to FBI Director to Support Their Efforts to Change Standard 17 and Address Concerns Raised by Public Labs*

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Robert Mueller, Director  
Federal Bureau of Investigation  
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Dear Director Mueller,

We are writing in response to the letter addressed to you on June 8 by Susanne Brenneke, the Missouri State CODIS Administrator and chair of the NDIS Enhancement Working Group. While most of the information contained in the June 8 letter is accurate, we believe that some of the conclusions drawn are incorrect, and that this process has not yet addressed key reasons why law enforcement is interested in seeing the current regulations modified. Most importantly, it does not discuss the specific needs of law enforcement and victims which is to see the DNA testing work completed at the highest quality with the greatest speed for the least cost; whether or not the work is done through public labs or private labs is immaterial to them. There also is continued argument being put forth by public labs that the current regulations are needed because the profit motive of private labs makes them inherently untrustworthy. Putting aside the fact that without private industry there would be no DNA testing technology (along with many other beneficial technologies), the fact is the federal government has come up with ways to successfully regulate every other industry with private sector involvement without resorting to reviewing 100% of that sector's output by a public employee and without resorting to different standards for public agencies and private companies performing the same functions. The Federal Government should be able to come up with an approach that works in this manner for forensic DNA testing.

**The Technical Review Problem**

The June 8 letter claims that the April 2010 FBI survey does not support the assertion that the backlog of DNA testing is caused by the need to conduct technical reviews of DNA analyses. Specifically, the letter asserts that "only 2 of the 189 labs had greater than 200 cases waiting on the technical review process with a single lab having greater than 500 cases" and that the vast majority of cases in backlog have not even been processed yet. The letter goes on to state that "focused efforts should be made to determine the true nature of the backlog problem."

While it is no doubt true that only a few labs have a large number of cases waiting on the technical review process, that fact does not mean the technical review process is not hindering elimination of the backlog. The fundamental problem, which the survey apparently did not address, is that the rules themselves keep public labs and law enforcement from using private labs, and thereby increase the backlog by failing to maximize use of existing resources. In fact, despite the budget crisis and the potential cost savings offered by private labs, 72% of public labs do not outsource casework today (as stated in the June 8 letter). Consequently, it should come as no surprise to anyone that the April public lab survey yielded the results it did.

There are three key reasons why the current quality assurance standards governing private lab analysis (Standard 17) impede backlog reduction and increase the backlog.

- 1) Local law enforcement agencies are being told that because of the requirements for the site visit and/or the technical review process, they cannot use their existing budget to enter into partnerships with private labs, regardless of the limitations the state lab has in completing their work in a timely manner due to their budget challenges. We initiated a process in 2009 to call on law enforcement agencies in Texas, California, and Washington State to determine if we could augment their testing needs given the backlog in those states. In all three states, the public lab declared they would not approve these partnerships because they did not have the resources to perform technical reviews of private lab results. The Texas Department of Public Safety is forced because of their limited resources to limit the number of private lab cases they can review for the entire state of Texas to just 20 per month. The California Department of Justice also has told law enforcement it must limit the number of contracts with private labs because of the onerous nature of Standard 17, and in one case where a suspect was terminally ill, refused to allow that case to be rush tested by a private lab due to the onerous nature of the standard (it was hoped that implicating the suspect would cause him to implicate other people thought to be involved in the crime). In Washington State, it took a year for one police agency interested in getting a contract to work with a private lab to get approval and that state has actually requested federal money to help handle the incremental workload that increased testing with a private lab will entail for their state personnel.
- 2) At least one if not both of the labs mentioned in the above-cited statistic are from Los Angeles, the only city that has made DNA testing of 100% of rape cases a recent priority. Recent hearings on both the Senate and House indicate significant interest on Capitol Hill in seeing other cities and states apply the same principle and legislation has already been passed in Illinois. If and when this occurs (and federal legislation has been proposed to incent application of this principle in all states), those cities and states are going to be faced with the same problem confronted by Los Angeles. While this is only a problem in two public labs today, if the backlog of untested rape kits is addressed, this problem will become widespread.
- 3) We do agree with public labs that the primary reason for any backlog is a lack of resources. Lack of resources can be addressed in two ways; doing more with existing resources or getting additional funding. Given the current economic crisis, additional resources are difficult to obtain. Moreover, it is important for public labs to maximize the use of existing resources. We believe that when all costs are counted and compared on an “apples to apples basis”, private labs can offer public labs significant cost savings through appropriate public-private testing partnerships. In fact, based on recent statistics issued by the NIJ (NCJ 230183, June 2010) and published private lab contract costs, we estimate that up to two and a half times more cases can be completed in public-private partnerships using federal backlog reduction grant money (factoring in screening and testimony costs) as compared to alternatives currently allowed (primarily overtime and equipment). The cost benefit of using private labs has also been measured in public labs like San Francisco and Los Angeles. So why not use private labs more judiciously to stretch existing federal grant dollars and state dollars farther? Many public labs are unwilling to use private labs because of the burdens imposed by the FBI's quality assurance requirements that public labs conduct a site visit to the private lab and conduct a technical review of all the work completed by the private lab.

#### **Considerations Associated with the FBI's Proposal: Incentives, Accountability, and Meaningful Errors**

##### Incentives

The June 8 letter states that “Public labs exist to protect public safety and to support the pursuit of justice. In contrast, private labs exist to generate profit.” This implies that private labs are likely to be more error prone than

public labs because of their profit motivation. However, private labs must compete for contracts based on quality and thus have the incentive to invest in quality control mechanisms (e.g., automated systems to check for contamination, prevent sample swapping, perform plate fingerprinting, and perform complex calculations) that far exceed those of many public labs which are not subject to competition. On the other hand, public labs, despite “existing to protect public safety and support the pursuit of justice,” have made many errors over the years in DNA testing as well as other forensic disciplines including labs from Washington State, Texas, California, Michigan, New York, Illinois, Nevada, North Carolina, Maryland, and Virginia, as well as the FBI. Clearly, being a public employee does not preclude the possibility of making a mistake.

In addition, we are not aware of a single example outside of forensics in the U.S. where both public and private agencies perform the same activities but private agencies are subjected to a different set of rules than public agencies and also are required to have 100% of what they do rechecked by a public agency. Consider the case of clinical lab testing. There are many not-for-profit hospitals and government labs that perform this testing along with many private labs. Despite the fact that life or death treatment decisions are made on a daily basis based on these test results, public labs and private labs are held to the exact same quality standards and accreditation requirements.

The case study for the benefits of modifying Standard 17 is well established in the United Kingdom where public labs and private labs have had to meet the exact same quality standards and accreditation requirements for the last several years. This has enabled the United Kingdom to take advantage of the power of competition to increase service and quality and decrease costs. The results have been compelling. Not only has the backlog been virtually eliminated, but the costs of testing have dropped significantly and contract turn-around times for testing have been greatly shortened. In fact, contract turn-around time for a no-suspect rape case is just 10 days; for property crime it is just 3 days; and for convicted offender samples it is just 2 days. The attitude in the United Kingdom was to find a way to make the revised process work, instead of finding reasons why it would not work. Given the benefits to victims and law enforcement, we believe it is well worth trying to find a way to make change work instead of focusing on all the reasons why change will not work.

### Accountability

A perceived lack of private lab accountability is another important factor raised in the June 8 letter. As stated, “In any scenario where something goes wrong, it is the public lab that will be held accountable.” That is only partly true, as the private lab most certainly will be held accountable by the public lab and, should these mistakes be serious or persist, the private lab will no longer be awarded work. The private lab also is held accountable by its owners who have no incentive to see errors made given the consequences can put them out of business. Having said that, the letter is most likely referring to accountability by the OIG for mistakes that are made and, in that sense as it stands today, it is true that only the public lab is accountable to the OIG for mistakes. However, there is nothing to prevent that from being changed. After all, there is nothing stopping the federal government from making private labs accountable to the OIG (e.g., private clinical labs are held accountable to the OIG today). In fact, in his testimony at the May 20 House Judiciary Committee meeting on the rape kit backlog, Dr. Christian Hassell, when asked if changing Standard 17 was possible, stated that it was as long as accountability could be addressed (rather than saying it was not possible because accountability could not be addressed).

### Meaningful Errors

The June 8 letter states that “Private labs view meaningful errors differently than public labs. For example, a private lab may define meaningful errors as those causing erroneous identification, while a public lab might also include those errors that can lead to an identification being missed or a prosecution being jeopardized.”

First of all, it is important to point out that the primary function of the QAS guidelines and the reason the FBI was entrusted to develop these guidelines is to protect the integrity of the CODIS database, for which the FBI is the custodian. Protecting the integrity of the CODIS database means ensuring that poor quality data that result in erroneous identification do not go into CODIS. Missing an identification because no data were obtained from a sample that was expected to yield results, for example, results in false negatives and does not jeopardize the integrity of CODIS.

This is not to say that errors that can lead to an identification being missed or a prosecution being jeopardized are not important. They are very important, but there is no agreed upon standard for what that means (every lab will have a different standard) and that is not the reason for having the quality assurance guidelines. If we assume for the sake of argument that these areas are an important reason for having a third technical review of private lab data by a public lab, how does law enforcement know, for example, that public labs are not missing an identification they should have made? Let's take the case of Raymond Towler, who was exonerated in May, 2010 after nearly 30 years in prison for crimes he did not commit. When his case was reopened, a pair of panties was sent to the state lab in Ohio for analysis. While evidence of semen was found, no sperm was found and no further testing was performed. Ultimately, the Innocence Project sent the work to Orchid Cellmark for analysis where sperm was identified and a Y-STR profile obtained that exonerated Mr. Towler. Another high profile example occurred in Texas where evidence in a McKinney, Texas quadruple homicide originally tested by the Texas Department of Public Safety lab was inconclusive, but further testing by Orchid Cellmark garnered conclusive results and ultimately the conviction of Raul Cortez. Should the Ohio and Texas state labs now be subject to having their cases reviewed by another lab since they missed these identifications?

In the United Kingdom, some police forces actually do comparisons of competing lab data quality (e.g., by sending large number of randomized samples of the same item type to different labs) to determine which lab has higher quality in making a contract award. The police forces then monitor the winner after the contract has been awarded to ensure quality does not decline. In the United States, no such comparisons are made. Quality is assumed to be a given when clearly, from the above examples, it is not (this is because every lab has a different approach to DNA testing; even labs within the same state system may use different SOPs).

#### **Broad Representation on the Working Group is Lacking**

We also note a factual inaccuracy in the first part of the June 8 letter that there was a public comment period for the July 2009 Quality Assurance Standards. To the best of our knowledge, there was no comment period by which victim's groups, private labs, or law enforcement could weigh in on the July 2009 revisions (Orchid Cellmark was not officially notified of these revisions until a few days before they were implemented). To the best of our knowledge, only public labs were given a chance to comment on the proposed standards. This raises another important point. Like the creation of these guidelines themselves, the current working group contains no representatives from victim's groups, law enforcement, or private labs. An August 2005 memo from the former NIJ director called for a change in this working group composition, as did 2008 legislation proposed by Rep. Schiff (D-CA) and Rep. Lungren (R-CA).

Some have argued that this is a scientific issue and thus the decision on how to move forward is best made by scientists. This argument has merit, but only if scientific data are being used to make decisions. To the best of our knowledge, no properly controlled, third party, scientific data were used to develop the existing policy and none are being used to develop the new policy. In the absence of scientific data to be evaluated, this discussion becomes more of a policy issue than a scientific debate (i.e., a decision on whether or not to trust private labs in the absence of any empirical data to prove they are not trustworthy relative to public labs is a policy decision not a scientific decision) and, as such, the stakeholders more impacted by the policy, such as victims and law enforcement, should have a greater role in what transpires.

**The Way Forward**

The June 8 letter states that “each lab knows best how to solve its own problems.” In that regard, it is important to point out that creating guidelines that are the same for private and public labs does not prevent public labs from performing site visits and additional technical review (or any other quality checks they want to make). It just eliminates the federal requirement to do so. Since public labs must pre-approve any private lab work before it can go into CODIS, they can still hold private labs to a higher standard if they so choose. Should the current federal guidelines be modified so that private labs and public labs are held to the same standards, undoubtedly some public labs will still choose to hold private labs to a higher standard while others will choose a more efficient approach.

Ultimately, this debate should not be about which labs are better or even more cost-effective. This debate should be about creating a regulatory environment that is in the best interests of victims and law enforcement while ensuring quality. In our opinion, because Standard 17 (1) has not been demonstrated to create any incremental value for victims and law enforcement, (2) is not supported as being necessary by an independent study, and (3) tangibly impedes the ability of law enforcement to engage in public-private partnerships for backlog reduction, the current regulatory environment is not in the best interests of victims and law enforcement.

We hope that the FBI will continue in a fair and impartial assessment of Standard 17 that is fact-based and looks at the situation from the point of view of meeting the needs of victims and law enforcement while safeguarding quality. We are confident such an assessment will only strengthen forensic science in the U.S., accelerate backlog reduction, and prevent future backlogs from occurring.

Sincerely,



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Public Safety & Elections Task Force  
As of 6/30/2010

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Public Safety & Elections Task Force  
As of 6/30/2010

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Public Safety & Elections Task Force  
As of 6/30/2010

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Public Safety & Elections Task Force  
As of 6/30/2010

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Public Safety & Elections Task Force  
As of 6/30/2010

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As of 6/30/2010

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Public Safety & Elections Task Force  
As of 6/30/2010

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Total Records 153

# ATTENDEE

## REGISTRATION / HOUSING FORM

AMERICAN LEGISLATIVE EXCHANGE COUNCIL **ALEC**

**Early registration deadline: June 23, 2010**  
**Standard registration deadline: July 12, 2010**  
**Housing cut-off date: July 12, 2010**



**Manchester Grand Hyatt - San Diego, CA**

Online  
www.alec.org

Fax (credit cards only)  
202.331.1344

Phone / Questions • Mon-Fri, 9am-5:30 pm Eastern  
202.742.8538

Mail • ALEC Registration & Housing  
P.O. Box 96754 • Washington, DC 20090-6754

### ATTENDEE INFORMATION

Prefix (required)  Sen  Rep  Del  Mr  Mrs  Ms  Other \_\_\_\_\_

Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Middle Initial \_\_\_\_\_ Badge Nickname \_\_\_\_\_

Title \_\_\_\_\_

Organization (required) \_\_\_\_\_

Address \_\_\_\_\_ Suite # \_\_\_\_\_

City \_\_\_\_\_ State/Province \_\_\_\_\_ County \_\_\_\_\_ ZIP/Postal code \_\_\_\_\_

Daytime phone \_\_\_\_\_ Fax \_\_\_\_\_ Alternate phone \_\_\_\_\_

Email (confirmation will be sent by email) \_\_\_\_\_

**Spouse / Guest / Kids' Congress:** Please complete the Spouse / Guest / Kids' Congress registration form.

### REGISTRATION INFORMATION

#### \*\*Save \$100 on registration by booking your hotel room in ALEC's headquarter hotel\*\*

**DISCOUNTED REGISTRATION FEES** are extended only to registrants booking in ALEC's headquarter hotel. Your \$100 savings will become valid when accommodations are confirmed.

	EARLY until June 23	STANDARD until July 12	ON-SITE begin July 13	DAILY	Amount
<input type="checkbox"/> I am already registered: Order # _____					
<i>**Please note that member fees are subject to verification</i>	June 23	July 12	July 13		
<input type="checkbox"/> ALEC Legislative Member	\$510	\$610	\$710	\$395	\$ _____
<input type="checkbox"/> Legislator / Non-Member	\$625	\$700	\$850	\$495	\$ _____
<input type="checkbox"/> ALEC Private Sector Member	\$840	\$1090	\$1800	\$895	\$ _____
<input type="checkbox"/> Private Sector / Non-Member	\$1075	\$1725	\$2200	\$1095	\$ _____
<input type="checkbox"/> ALEC Non-Profit Member (501(c)(3) status required)	\$615	\$740	\$940	\$595	\$ _____
<input type="checkbox"/> Non-Profit Non-Member (501(c)(3) status required)	\$750	\$950	\$1150	\$795	\$ _____
<input type="checkbox"/> Legislative Staff / Government	\$685	\$785	\$935	\$595	\$ _____
<input type="checkbox"/> ALEC Legacy Member	\$0	\$0	\$0	\$0	\$0
<b>Promo Code</b> _____				<b>TOTAL REGISTRATION FEES:</b>	<b>\$</b> _____

#### METHOD OF REGISTRATION PAYMENT

**Credit Card:** Credit cards will be charged immediately. Please fax to the above number for processing.

Amer Express  Visa  MasterCard

Card # \_\_\_\_\_

Cardholder (please print) \_\_\_\_\_

Exp Date (mm/yy) \_\_\_\_\_ Security Code \_\_\_\_\_

Signature \_\_\_\_\_

**Checks:** Payment must be in U.S. currency drawn on a U.S. bank. Please make check payable to ALEC Registration and send to above address.

**Note:** Registration forms with enclosed payments must be received by 5pm Eastern on the following dates to be eligible for discounted registration rates: June 9, 2010, for early registration rates, or July 12, 2010, for standard registration rates. Forms and/or payments received beginning July 13, 2010, will be subject to the on-site registration rate. If registering after July 13, 2010, please bring completed form and payment to register on-site.

#### REGISTRATION CONFIRMATION INFORMATION

Online registrants will receive immediate email confirmation. If registering by form, confirmation will be emailed, faxed, or mailed within 72 hours of receipt of payment.

#### REGISTRATION CANCELLATION / REFUND INFORMATION

Registrations cancelled prior to 5pm Eastern July 12, 2010 are subject to a \$100 cancellation fee. Registrations are non-refundable after 5pm Eastern July 12, 2010.

### HOUSING

### RESERVATION CUTOFF FOR ALEC DISCOUNTED RATE IS 12pm Eastern July 12, 2010

#### \*\*Save \$100 on registration by booking your hotel room in ALEC's headquarter hotel\*\*

I do not require a reservation at this time.

Arrival Date \_\_\_\_\_ Departure Date \_\_\_\_\_

Sharing room with \_\_\_\_\_

#### Room type

<input type="checkbox"/> Single	(1 person-1 bed)	\$ 219
<input type="checkbox"/> Double	(2 persons-1 bed)	\$ 239
<input type="checkbox"/> Dbl/Dbl	(2 persons-2 beds)	\$ 239
<input type="checkbox"/> Triple	(3 persons-2 beds)	\$ 259
<input type="checkbox"/> Quad	(4 persons-2 beds)	\$ 259

**Note:** All rates DO NOT include sales tax 12.71% (subject to change)

A limited number of suites are available upon request. Please call (800) 221-3531 for additional information.

#### Special requests

ADA room required:  
\_\_\_\_ Audio \_\_\_\_ Visual \_\_\_\_ Mobile  
 Rollaway / crib: \_\_\_\_\_  
 Other:  
\_\_\_\_\_

#### METHOD OF HOUSING PAYMENT

Please use the same method of payment as above.

**Credit Card:** Credit cards will be used to guarantee the reservation

Amer Express  Visa  MasterCard  Discover

Card # \_\_\_\_\_

Cardholder (please print) \_\_\_\_\_

Exp Date (mm/yy) \_\_\_\_\_ Security Code \_\_\_\_\_

Signature \_\_\_\_\_

**Checks:** Payment must be in U.S. currency drawn on a U.S. bank. Please make check payable to ALEC and send to above address.

#### HOUSING CONFIRMATION INFORMATION

Online reservations will receive immediate email confirmation. Reservations received by form will be confirmed via email, fax, or mail within 72 hours of receipt.

#### HOUSING CANCELLATION / REFUND INFORMATION

Credit cards will be charged one night room and tax in the event of a no show or if cancellation occurs within 72 hours prior to arrival. Departures prior to the departure date confirmed by the hotel at check-in will result in a charge of \$100. Please obtain a cancellation number when your reservation is cancelled.

# SPOUSE / GUEST KIDS' CONGRESS REGISTRATION FORM

AMERICAN LEGISLATIVE EXCHANGE COUNCIL  
**ALEC**

Early registration deadline: June 16, 2010  
Standard registration deadline: July 12, 2010



Manchester Grand Hyatt - San Diego, CA

Online  
www.alec.org

Fax (credit cards only)  
202.331.1344

Phone / Questions • Mon-Fri, 9am-5:30 pm Eastern  
202.742.8538

Mail • ALEC Registration & Housing  
P.O. Box 96754 • Washington, DC 20090-6754

## **IMPORTANT: Please identify the ALEC attendee**

### **ALEC ATTENDEE Profile Information**

First Name	Last Name	REGISTRATION ORDER NUMBER
Daytime Phone		
Email (Confirmation will be sent by email)		

<b>SPOUSE / GUEST / KIDS' CONGRESS Registration Fees</b>		(#) x	<b>EARLY until June 16</b>	<b>STANDARD until July 12</b>	<b>ON-SITE begin July 13</b>	<b>DAILY</b>	<b>Amount</b>
A. Spouse / Guest / Child 18 yrs or older		(      ) x	\$150	\$150	\$150	n/a	= \$_____
B. Kid's Congress (6 months to 17 yrs) <b>for ALEC Members</b> <b>Full Conference Rate</b>		(      ) x	\$250	\$350	\$550	n/a	= \$_____
C. Kid's Congress (6 months to 17 yrs) <b>for Non-ALEC Members</b> <b>Full Conference Rate</b>		(      ) x	\$350	\$450	\$650	n/a	= \$_____
D. Kid's Congress (6 months to 17 yrs) <b>Day rate: Thurs., Fri., or Sat.</b>		(      ) x	\$100	\$150	\$250	n/a	= \$_____

SPOUSE / GUEST / KID'S REGISTRATION FEE(s) TOTAL \$ \_\_\_\_\_

<b>Spouse / Guest / Child Names</b> <i>Please list the names of the spouse / guest / children below</i>		
Spouse / Guest / Child Name	Child Date of Birth	Registration Type A,B,C,D (above)
1.		5.
2.		6.
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### **Payment Information**

**Credit Card:** Credit cards will be charged immediately. Please fax to the above number for processing.

<input type="checkbox"/> American Express	Card # _____
<input type="checkbox"/> Visa	Cardholder (please print) _____
<input type="checkbox"/> MasterCard	Exp Date (mm/yy) _____ Security Code _____
Signature _____	

**Check / money order:** Payment must be in U.S. currency drawn on a U.S. bank. Please make check payable to ALEC Registration and send to above address.

**Note:** Registration forms with enclosed payments must be received by 5pm Eastern on the following dates to be eligible for discounted registration rates: June 9, 2010, for early registration rates, or July 12, 2010, for standard registration rates. Forms and/or payments received after July 12, 2010 will be subject to the on-site registration rate. If registering after July 12, 2010 please bring completed form and payment to register on-site.

### **Confirmation Information**

Online registrants will receive immediate confirmation via email. If registering by written form, confirmation will be emailed (if address provided), faxed, or mailed within 72 hours of receipt of payment.

### **Cancellation / Refund Information**

Registrations cancelled prior to 5:00 p.m. (EST) July 12, 2010 are subject to a \$100 cancellation fee. Registrations are non-refundable after 5:00 p.m. (EST) July 12, 2010.



## **Mission Statement**

The American Legislative Exchange Council's mission is...

To advance the Jeffersonian Principles of free markets, limited government, federalism, and individual liberty through a nonpartisan public-private partnership among America's state legislators, concerned members of the private sector, the federal government, and the general public.

To promote these principles by developing policies that ensure the powers of government are derived from, and assigned to, first the People, then the States, and finally the Federal Government.

To enlist state legislators from all parties and members of the private sector who share ALEC's mission.

To conduct a policy making program that unites members of the public and private sector in a dynamic partnership to support research, policy development, and dissemination activities.

To prepare the next generation of political leadership through educational programs that promote the principles of Jeffersonian democracy, which are necessary for a free society.

## SCHOLARSHIP POLICY BY MEETING

### ***ALEC Spring Task Force Summit:***

1. ***Spring Task Force Summit Reimbursement Form:*** ALEC Task Force Members are reimbursed by ALEC up to \$350.00 for travel expenses. Receipts must be forwarded to the ALEC Policy Coordinator and approved by the Director of Policy.
2. ALEC Task Force Members' room & tax fees for a two-night stay are covered by ALEC.
3. *Official Alternate Task Force Members* (chosen by the State Chair and whose names are given to ALEC more than 35 days prior to the meeting to serve in place of a Task Force Member who cannot attend) are reimbursed in the same manner as Task Force Members.
4. ***State Scholarship Reimbursement Form:*** Any fees above \$350, or expenses other than travel and room expenses can be submitted by Task Force Members for payment from their state scholarship account upon the approval of the State Chair. Receipts must be submitted to the State Chair, who will submit the signed form to the Director of Membership.
5. *Non-Task Force Members* can be reimbursed out of the state scholarship fund upon State Chair approval. Receipts must be submitted to the State Chair, who will submit the appropriate signed form to the Director of Membership.

### ***ALEC Annual Meeting:***

***State Scholarship Reimbursement Form:*** State scholarship funds are available for reimbursement by approval of your ALEC State Chair. Expenses are reimbursed after the conference, and may cover the cost of travel, room & tax, and registration. Receipts are to be submitted to the State Chair, who will then submit the signed form to the Director of Membership.

### ***ALEC States & Nation Policy Summit:***

1. ***States & Nation Policy Summit Reimbursement Form:*** ALEC offers two scholarships per state to cover the cost of travel, room & tax, and registration not to exceed \$1,000.00 per person for a total of \$2,000.00 per state. ALEC scholarship recipients must be named by the ALEC State Chair. Expenses are submitted to the State Chair and reimbursed after the conference. The State Chair submits the signed form to the Director of Membership.
2. ***State Scholarship Reimbursement Form:*** Any other fees or payments must come out of the state scholarship account, with the approval of the State Chair. Receipts must be submitted to the State Chair, who submits the signed form to the Director of Membership.

### ***ALEC Academies:***

***Academy Reimbursement Form:*** Attendees of ALEC Academies are reimbursed by the Task Force Committee hosting the Academy. Attendees will receive a form at the Academy, and will be reimbursed up to \$500.00 for travel, and room & tax fees for a two-night stay by ALEC. Receipts must be forwarded to the appropriate Task Force Director and approved by the Director of Policy.



## **American Legislative Exchange Council TASK FORCE OPERATING PROCEDURES**

### **I. MISSION OF TASK FORCES**

Assume the primary responsibility for identifying critical issues, developing ALEC policy, and sponsoring educational activities which advance the Jeffersonian principles of free markets, limited government, federalism, and individual liberty. The mission will be accomplished through a non-partisan, public and private partnership between ALEC's legislative and private sector members in the specific subject areas assigned to the Task Force by the Board of Directors.

### **II. TASK FORCE RESPONSIBILITIES**

- A. Task Forces have the primary responsibility for identifying critical issues and developing ALEC's official policy statements and model legislation appropriate to the specific subject areas of the Task Force.
- B. Task Forces serve as forums for an exchange of ideas and sharing of experiences between ALEC's state legislator and private sector members.
- C. Task Forces are responsible for developing and sponsoring the following educational activities appropriate to the specific subject area of the Task Force:
  - publications that express policy positions, including, but not limited to State Factors and Action Alerts;
  - educational communication and correspondence campaigns;
  - issue specific briefings, press conferences and press campaigns;
  - witness testimony and the activities of policy response teams;
  - workshops at ALEC's conferences; and
  - specific focus events.
- D. The Executive Director is to Task Forces are responsible for developing an annual budgets, which shall include expenses associated with Task Force meetings and educational activities. A funding mechanism to finance all meetings and educational activities proposed by Task Forces must be available before they can be undertaken.

### **III. GENERAL PROCEDURES**

- A.** Requests from ALEC members for policy statements, model legislation and educational activities shall be directed by the Executive Director to the appropriate Task Force, or the Board of Directors if the issue does not fall within the jurisdiction of any Task Force. The appropriate Public and Private Sector Task Force Co-Chairs determine the agenda for each Task Force meeting, and the meetings will be called and conducted in accordance with these Operating Procedures.

The Director of Policy with the consent of the Executive Director assigns a model bill or resolution to the most appropriate Task Force based on Task Force content and prior jurisdictional history 35 days before a Task Force Meeting. All Task Force Co-Chairs will be provided an email or fax summary of all model bills and resolutions 35 days before the Task Force meeting

If both the Co-Chairs of a Task Force are in agreement that they should have jurisdiction on model legislation or a resolution, the legislation or resolution will be considered by the Task Force. If the other Task Force Co-Chairs believe they should have jurisdiction or if the author of the model bill or resolution does not agree on the jurisdictional assignment of the bill, they will have 10 days after the 35-day mailer deadline to submit in writing or by electronic appeal to the Director of Policy their intent to challenge the jurisdiction assignment. The Director of Policy will notify the Executive Director who will in turn notify the National Chair and the Private Enterprise Board Chair. The National Chair and the Private Enterprise Board Chair will in turn refer the matter in question to the Board of Directors Task Force Board Committee. The Director of Policy will establish a conference call for the Task Force Board Committee co-chairs, the author, the affected Task Force Co-Chairs and the Director of Policy at a time convenient for all participants.

The Task Force Board Committee Co-Chairs shall listen to the jurisdictional dispute by phone or in person within 10 days of the request. If both Task Force Board Committee Co-Chairs are in agreement that the Director of Policy made an incorrect jurisdictional referral, only then will the model bill or resolution be reassigned to a committee as they specify once agreed upon by the National Chair and the Private Enterprise Board Chair. The bill or model resolution is still eligible to be heard in whatever Task Force it is deemed to be assigned to as if submitted to the correct Task Force for the 35-day mailer. The National Chair and the Private Enterprise Board Chair decision is final on this model bill or resolution.

Joint referral of model legislation and/or resolutions are allowed if all the affected Task Force Co-Chairs agree. All model legislation and resolutions that have been referred to, more than one Task Force must pass the identical language in both Task Forces within two consecutive Task Force meetings. It is at the Task Force

Co-Chairs discretion how they will handle the hearings of the model legislation or resolution. Both sets of co-chairs have the ability to call a working group, subcommittee, or simply meet consecutively or concurrently if necessary.

If the Task Force co-chairs both agree to waive jurisdiction, they may do so as long as another Task Force still has jurisdiction.

The National Chair and the Private Sector Board Chair will rely upon the Task Force Board Committee Co-Chairs for advice and recommendations on model legislation or resolutions when no jurisdiction in any of the existing Task Forces in operation can be found. The Task Force Board Committee Co-Chairs will work with the Executive Director and the Director of Policy to identify public and private sector Task Force members (not alternates) from the existing Task Forces should their expertise be of assistance to the Task Force Board Committee in reaching a determination and recommendation for approval by the National Chair and the Private Enterprise Board Chair.

- B. The National Chair and the Private Sector Board Chair will rely upon the Task Force Board Committee Co-Chairs for advice and recommendations on model legislation or resolutions when no jurisdiction in any of the existing Task Forces in operation can be found. The Task Force Board Committee Co-Chairs will work with the Executive Director and the Director of Policy to identify public and private sector Task Force members (not alternates) from the existing Task Forces should their expertise be of assistance to the Task Force Board Committee in reaching a determination and recommendation for approval by the National Chair and the Private Enterprise Board Chair.
- C. The Board of Directors shall have ultimate authority over Task Force procedures and actions including the authority to create, to merge or to disband Task Forces and to review Task Force actions in accordance with these Operating Procedures. Nothing in these Operating Procedures prohibits the Board of Directors from developing ALEC policy; however, such a practice should be utilized only in exceptional circumstances. Before the policy is adopted by the Board of Directors, it should be sent to the Public and Private Sector Task Force Co-Chairs under whose jurisdiction the matter falls for review and comment back to the Board of Directors.
- D. The operating cycle of a Task Force is two years. A new operating cycle begins on January 1 of each odd numbered year and ends on December 31 of the following even numbered year. Task Force activities shall be planned and budgeted on an annual basis within each two-year operating cycle.
- E. ~~At the ALEC Annual Meeting, each Task Force will be responsible for determining an operating budget for the succeeding calendar year. The Executive Director will notify the Task Force Co-Chairs, at the ALEC Annual Meeting, what inflation factor will be used by the Task Force to determine the operating~~

~~and programming budgets. Task Force membership and budget information will be reported to the Executive Director by the Public and Private Sector Task Force Co-Chairs. The Executive Director will present this information to the Board of Directors at its regular fall meeting.~~

- F. If a Task Force is unable to develop an operating budget, the Board of Directors will determine whether to continue the operations of the Task Force. This determination will be made according to: (1) the level of membership on the Task Force, and (2) the need for continued services developed by the Task Force for ALEC.
- G. The Board of Directors shall have the authority to allocate limited general support funds to finance the annual operating budget of Task Forces that meet the requirements prescribed in Section III (E). The Executive Director shall determine, and report to the Board of Directors, the amount of general support funds available to underwrite such Task Forces.

#### **IV. MEMBERSHIP AND MEMBER RESPONSIBILITIES**

- A. The membership of a Task Force consists of legislators who are members in good standing of ALEC and are duly appointed to the Task Force, in accordance with Section VI (A) and private sector organizations that are full members of ALEC, contribute to the assessment for the Task Force operating budget, and are duly appointed to the Task Force, in accordance with Section VI (B). Private sector organizations that were full members of ALEC and contributed the assessment for the Task Force's operating budget in the previous year, can be appointed to the Task Force for the current year, conditional upon renewal of full ALEC membership and receipt of the current year's assessment for the Task Force operating budget prior to March 31<sup>st</sup>, unless an alternative date has been approved by the Executive Director.
- B. Each Task Force shall have least two Co-Chairs; a Public Sector Task Force Co-Chair and a Private Sector Task Force Co-Chair. The Public Sector Task Force Co-Chair must be a member of the Task Force and appointed in accordance with Section VI (A). The Private Sector Co-Chair must represent a private sector member of the Task Force and be appointed in accordance with Section VI(B). The Co-Chairs shall be responsible for:
  - (1) calling the Task Force and the Executive Committee meetings to order, setting the agenda and co-chairing such meetings;
  - (2) appointing and removing legislators and private sector members to and from the Task Force Executive Committee and subcommittees;
  - (3) creating subcommittees, and determining each subcommittee's mission, membership limit, voting rules, deadlines, and term of service; and

- (4) selecting Task Force members to provide support for and against Task Force policies during formal Board reviews.
- C. Each Task Force shall have an Executive Committee appointed by the Public and Private Sector Task Force Co-Chairs that is appropriate in number to carry out the work product and strategic plan of ALEC and the Task Force. The Executive Committee shall consist of the Public Sector Task Force Co-chair, the Private Sector Task Force Co-Chair, the subcommittee co-chairs, and the remainder will be an equal number of legislative and private sector Task Force members. The Executive Committee will be responsible for determining the operating budget and proposing plans, programs and budgets for the succeeding year in accordance with (Section V (B); determining if a proposed educational activity conforms to a previously approved model bill, resolution or policy statement in accordance with (Section IX (F); and determining if an emergency situation exists that justifies waiving or reducing appropriate time limits in accordance with (Section VIII (H)).
- D. Each Task Force may have any number of subcommittees, consisting of Task Force members and advisors to focus on specific areas and issues and make policy recommendations to the Task Force. The Task Force Co-chairs, shall create subcommittees and determine each subcommittee's mission, membership limit, voting rules, deadlines, and term of service. Any model bill, resolution or policy statement approved by a subcommittee must be approved by the Task Force before it can be considered official ALEC policy.
- E. Each Task Force may have advisors, appointed in accordance with Section VI (G). Advisors shall assist the members and staff of the Task Force. They shall be identified as advisors on official Task Force rosters, included in all official Task Force mailings and invited to all Task Force meetings. Advisors may also have their expenses paid at Task Force meetings covered by the Task Force operating budget with the approval of the Task Force Co-Chairs. An advisor cannot be designated as the primary contact of a private sector Task Force member, cannot be designated to represent a private sector Task Force member at a Task Force, Executive Committee, or subcommittee meeting, and cannot offer or vote on any motion at a Task Force, Executive Committee, or subcommittee meeting.

#### ***V. Task Force Budgets***

- A. Each Task Force shall develop and operate a yearly budget to fund meetings.
- B. The operating budget shall be used primarily to cover expenses for Task Force meetings, unless specific funds within the budget are authorized for other use by the Task Force. The operating budget shall be assessed equally among the private sector members of the Task Force. The Executive Director, in consultation with the Task Force Co-Chairs shall determine which costs associated with each meeting will be reimbursed from the operating budget. Any funds remaining in a

Task Force's operating budget at the end of a year are transferred to ALEC's general membership account.

- C. The operating budget shall not be used to cover Task Force meeting expenses associated with alternate task force members' participation, unless they are appointed by their State Chair to attend the Spring Task Force Summit with the purpose to serve in place of a Task Force Member who is unable to attend. Task Force meeting expenses of alternate task force members shall be covered by their state's scholarship account.
- D. The programming budget shall be used to cover costs associated with educational activities. Contributions to the programming budget are separate, and in addition to operating budget contributions and annual general support/membership contributions to ALEC. The Executive Director shall determine the contribution required for each educational activity.

## ***VI. PROCESS FOR SELECTING TASK FORCE MEMBERS, CHAIRS, COMMITTEES AND ADVISORS***

- A. Prior to February 1 of each odd-numbered year, the current and immediate past National chairman will jointly select and appoint in writing three legislative members and three alternates to the Task Force who will serve for the current operating cycle, after receiving nominations from ALEC's Public and Private State Chairs, the Executive Director and the ALEC Public and Private Sector members of the Board. At any time during the year, the National Chairman may appoint in writing new legislator members to each Task Force, except that no more than three legislators from each state may serve as members of any Task Force, no legislator may serve on more than one Task Force and the appointment cannot be made earlier than thirty days after the new member has been nominated. In an effort to ensure the nonpartisan nature of each Task Force, it is recommended that no more than two legislators of any one political party from the same state be appointed to serve as members of any Task Force. A preference will be given to those ALEC legislator members who serve on or chair the respective Committee in their state legislature. A preference will be given to legislators who sponsor ALEC Task Force model legislation in the state legislature.
- B. Prior to January 10 of each odd-numbered year, the current and immediate past National Chairman will jointly select and appoint in writing the Task Force Chair who will serve for the current operating cycle, after receiving nominations from the Task Force. Nominations will be requested by the outgoing Task Force Chair and may be placed in rank order prior to transmittal to the Executive Director no later than December 1 of each even-numbered year. No more than five names may be submitted in nomination by the outgoing Task Force chair. The current and immediate past National Chairmen will jointly make the final selection, but

should give strong weight to the recommendations of the outgoing Task Force Chair. In an effort to empower as many ALEC leaders as possible, State Chairs and members of the Board of Directors will not be selected as Task Force Chairs. Task Force Chairs shall serve for one operating cycle term. Where special circumstances warrant, the current and immediate past National Chairmen may reappoint a Task Force Chair to a second operating cycle term.

- C. Prior to February 1 of each odd numbered year, the Public and Private Sector Task Force Co-Chairs will select and appoint in writing the legislative and private sector members of the Task Force Executive Committee, who will serve for the current operating cycle. The Public and Private Sector Task Force Co-Chairs will select and appoint in writing the legislative and private sector members and advisors to any subcommittee.
- D. Prior to February 1 of each year, the Private Enterprise Board Chair and the immediate past Private Enterprise Board Chair will select and appoint in writing the private sector members to the Task Force who will serve for the current year. The appointment letter shall be mailed to the individual designated as the primary contact for the private sector entity. At any time during the year, the Chair of the Private Enterprise Board may appoint in writing new private sector members to each Task Force, but no earlier than thirty days after the new member has qualified for full membership in ALEC and contributed the assessment for the appropriate Task Force's operating budget.
- E. Prior to January 10 of each odd-numbered year, the Chair of the Private Enterprise Board and the immediate past Private Enterprise Board Chair will select and appoint in writing the Task Force Private Sector Co-Chair who will serve for the current operating cycle, after receiving nominations from the Task Force. Nominations will be requested by the outgoing Task Force Private Sector Chair and may be placed in rank order prior to transmittal to the Chair of the Private Enterprise Board. The Chair and the immediate past Chair of the Private Enterprise Board will make the final selection, but should give strong weight to the recommendations of the outgoing Private Sector Task Force Co-Chair. In an effort to empower as many ALEC private sector members as possible, Private Enterprise State Chairs and members of the Private Enterprise Board will not be selected as Private Sector Task Force Co-Chairs. Private Sector Task Force Co-Chairs shall serve for one operating cycle term. Where special circumstances warrant, the current and immediate past Chair of the Private Enterprise Board may reappoint a Task Force Private Sector Chair to a second operating cycle term.
- F. Prior to February 1 of each odd-numbered year, the Task Force Private Sector Co-Chair will select and appoint in writing the private sector members of the Task Force Executive Committee, who will serve for the current operating cycle. The Task Force Private Sector Co-Chair shall select and appoint in writing the private sector members of any subcommittees.

G. The Public and Private Sector Task Force Co-Chairs, may jointly appoint subject matter experts to serve as advisors to the Task Force. The National Chair and the Private Enterprise Board Chair may also jointly recommend to the Task Force Co-Chairs subject matter experts to serve as advisors to the Task Force.

## ***VII. REMOVAL AND VACANCIES***

- A. The National Chair may remove any Public Sector Task Force Co-Chair from his position and any legislative member from a Task Force with or without cause. Such action will not be taken except upon thirty days written notice to such Chair or member whose removal is proposed. For purposes of this subsection, cause may include failure to attend two consecutive Task Force meetings.
- B. The Public Sector Task Force Co-Chair may remove any legislative member of an Executive Committee or subcommittee from his position with or without cause. Such action shall not be taken except upon thirty days written notice to such member whose removal is proposed. For purposes of this subsection, cause may include failure to attend two consecutive meetings.
- C. The Chairman of the Private Enterprise Board may remove any Private Sector Task Force Co-Chair from his position and any private sector member from a Task Force with cause. Such action shall not be taken except upon thirty days written notice to such Chair or member whose removal is proposed. For purposes of this subsection, cause may include but is not limited to the non-payment of ALEC General Membership dues and the Task Force dues. .
- D. The Private Sector Task Force Co-Chair may remove any private sector member of an Executive Committee or subcommittee from his position with cause. Such action shall not be taken except upon thirty days written notice to such member whose removal is proposed. For purposes of this subsection, cause may include but is not limited to the non-payment of ALEC General Membership dues and the Task Force dues.
- E. The Public and Private Sector Task Force Co-Chairs may remove an advisor from his position with or without cause. Such action shall not be taken except upon thirty days written notice to such advisor whose removal is proposed.
- F. Any member or advisor may resign from his position as Public Sector Task Force Co-Chair, Private Sector Task Force Co-Chair, public or private sector Task Force member, Task Force advisor, Executive Committee member or subcommittee member at any time by writing a letter to that effect to the Public Sector and Private Sector Task Force Co-Chairs. The letter should specify the effective date of the resignation, and if none is specified, the effective date shall be the date on which the letter is received by the Public and Private Task Force Co-Chairs.

G. All vacancies for Public Sector Task Force Co-Chair, Private Sector Task Force Co-Chair, Executive Committee member and subcommittee member shall be filled in the same manner in which selections are made under Section VI. All vacancies to these positions must be filled within thirty days of the effective date of the vacancy.

## ***VIII. MEETINGS***

A. Task Force meetings shall only be called by the joint action of the Public and Private Sector Task Force Co-Chairs. Task Force meetings cannot be held any earlier than thirty-five days after being called, unless an emergency situation has been declared pursuant to Section VIII(H), in which case Task Force meetings cannot be held any earlier than ten days after being called. It is recommended that, at least once a year, the Task Forces convene in a common location for a joint Task Force Summit. Executive Committee meetings shall only be called by the joint action of the Public and Private Sector Task Force Co-Chairs and cannot be held any earlier than three days after being called, unless the Executive Committee waives this requirement by unanimous consent.

B. At least forty-five days prior to a task force meeting any model bill, resolution or policy must be submitted to ALEC staff that will be voted on at the meeting. At least thirty-five days prior to a Task Force meeting, ALEC staff shall distribute copies of any model bill, resolution or policy statement that will be voted on at that meeting. This requirement does not prohibit modification or amendment of a model bill, resolution or policy statement at the meeting. This requirement may be waived if an emergency situation has been declared pursuant to Section VIII(H).

C. All Task Force meetings are open to registered attendees and invited guests of ALEC meetings and conferences. Only regular Task Force Members may introduce any resolution, policy statement or model bill. Only Task Force members will be allowed to participate in the Task Force meeting discussions and be seated at the table during Task Force meetings, unless otherwise permitted by the Public and Private Sector Task Force Co-Chairs.

D. ALEC private sector member organizations may only be represented at Task Force and Executive Committee meetings by the individual addressed in the appointment letter sent pursuant to Section VI(D) or a designee of the private sector member. If someone other than the individual addressed in the appointment letter is designated to represent the private sector member, the designation must be submitted in writing to the Public and Private Sector Task Force Co-Chairs before the meeting, and the individual cannot represent any other private sector member at the meeting.

- E. All Task Force and Executive Committee meetings shall be conducted under the guidelines of Roberts Rules of Order, except as otherwise provided in these Operating Procedures. A copy of the Task Force Operating Procedures shall be included in the briefing packages sent to the Task Force members prior to each meeting.
- F. A majority vote of legislative members present and voting and a majority vote of the private sector members present and voting, polled separately, are required to approve any motion offered at a Task Force or Executive Committee meeting. A vote on a motion to reconsider would be only with the sector that made the motion. Members have the right, in a voice vote, to abstain and to vote present by roll-call vote. In all votes a member can change their vote up until the time that the result of the vote is announced. Only duly appointed members or their designee as stated in Section VIII (D) that are present at the meeting may vote on each motion. No proxy, absentee or advance voting is allowed.
- G. The Public Sector Task Force Co-Chair and the Private Sector Task Force Co-Chair, with the concurrence of a majority of the Executive Committee, polled in accordance with Section VIII (F), may schedule a Task Force vote by mail or ~~fax~~ any form of electronic communication on any action pertaining to policy statements, model legislation or educational activity. The deadline for the receipt of votes can be no earlier than thirty-five days after notification of the vote is mailed or ~~faxed~~ notified by any form of electronic communication, unless an emergency situation is declared pursuant to Section VIII (H), in which case the deadline can be no earlier than ten days after notification is mailed or ~~faxed~~ notified by any form of electronic communication. Such votes are exempt from all rules in Section VIII, except: (1) the requirement that copies of model legislation and policy statements be mailed or ~~faxed~~ notified by any form of electronic communication with the notification of the vote and (2) the requirement that a majority of legislative members voting and a majority of the private sector members voting, polled separately, is required to approve any action by a Task Force.
- H. For purposes of Sections VIII(A), (B) and (G), an emergency situation can be declared by:
  - (1) Unanimous vote of all members of the Task Force Executive Committee present at an Executive Committee meeting prior to the meeting at which the Task Force votes on the model bill, resolution or policy statement; or
  - (2) At least three-fourth majority vote of the legislative and private sector Task Force members (voting in accordance with Section VIII (F)) present at the meeting at which the members vote on the model bill, resolution or policy statement.

- I. Ten Task Force members shall constitute a quorum for a Task Force meeting. One-half of the legislative and one-half of the private sector members of an Executive Committee shall constitute a quorum for an Executive Committee meeting.

## **IX. *REVIEW AND ADOPTION PROCEDURES***

- A. All Task Force policy statements, model bills or resolutions shall become ALEC policy either: (1) upon adoption by the Task Force and affirmation by the Board of Directors or (2) thirty days after adoption by the Task Force if no member of the Board of Directors requests, within those thirty days, a formal review by the Board of Directors. General information about the adoption of a policy position may be announced upon adoption by the Task Force.
- B. The Executive Director shall notify the Board of Directors of the approval by a Task Force of any policy statement, model bill or resolution within ten days of such approval. Members of the Board of Directors shall have thirty days from the date of Task Force approval to review any new policy statement, model bill or resolution prior to adoption as official ALEC policy. Within those thirty days, any member of the Board of Directors may request that the policy be formally reviewed by the Board of Directors before the policy is adopted as official ALEC policy.
- C. A member of the Board of Directors may request a formal review by the Board of Directors. The request must be in writing and must state the cause for such action and a copy of the letter requesting the review shall be sent by the National Chairman to the appropriate Task Force Chair. The National Chairman shall schedule a formal review by the Board of Directors no later than the next scheduled Board of Directors meeting.
- D. The review process will consist of key members of the Task Force, appointed by the Task Force Chair, providing the support for and opposition to the Task Force position. Position papers may be faxed or otherwise quickly transmitted to the members of the Board of Directors. The following is the review and adoption procedures:
  - Notification of Committee: Staff will notify Task Force Chairs and the entire task force when the Board requests to review one of the Task Forces' model bills or resolutions.
  - Staff Analysis: Will be prepared in a neutral fashion. The analyses will include:
    - History of Task Force action
    - Previous ALEC official action/resolutions
    - Issue before the board
    - Proponents arguments

- Opponents arguments
- Standardized Review Format: To ensure fairness, a set procedure will be used as the format to ensure the model bill/resolution has a fair hearing before the Board.
  - Task Force Chair(s) will be invited to attend the Board Review
  - Task Force Chair(s) will decide who will present in support and in opposition for the model bill/resolution before the Board.
  - Twenty minutes that is equally divided will be given for both sides to present before the Board.
  - It is suggested that the Board not take more than twenty minutes to ask questions of the presenters.
  - Presenters will then be excused and the Board will have a suggested twenty more minutes for discussion and vote.
  - All votes will be recorded for the official record.
- Notification of Committee: The Director of Policy will notify presenters immediately after the vote. If the Board votes to send the model bill/resolution back to the task force, the Board will instruct the Director of Policy or another board member what to communicate.

E. The Board of Directors can:

- (1) Vote to affirm the policy or affirm the policy by taking no action, or
- (2) Vote to disapprove the policy, or
- (3) Vote to return the policy to the Task Force for further consideration providing reasons therefore.

F. Task Forces may only undertake educational activities that are based on a policy statement, model bill or resolution that has been adopted as official ALEC policy, unless the Task Force votes to undertake the educational activity, in which case the educational activity is subjected to the same review process outlined in this Section. It is the responsibility of the Task Force Executive Committee to affirm by three-fourths majority vote conducted in accordance with Section VIII that an educational activity conforms to a policy statement, model bill or resolution.

**X. EXCEPTIONS TO THE TASK FORCE OPERATING PROCEDURES.**

Exceptions to these Task Force Operating Procedures must be approved by the Board of Directors.